

three year currency of the put option which was exercisable on 30th April, 2011.

consequences. This is set out in Note 1 to Rule 26.1, the relevant section of which

required no cash outlay and involved no downside risk for Macquarie. There did not appear to be any genuine investment interest in China Oriental. Macquarie did not appear to have any interest in obtaining an investment return from its shares in China Oriental; any dividends paid would simply go to reducing the price of the put. Having purchased a significant shareholding it had never contacted the company.

23. Furthermore, the put option price, unlike that for the original arrangements with ING and DB, was at a substantial premium to the last traded price of the shares in China Oriental. It should follow, even in the unlikely event of the suspension being lifted, it would be unlikely that there would be an opportunity for Macquarie to sell at above the put option price, so a realisation of its shareholding in China Oriental was a remote prospect, which Macquarie must have appreciated from the beginning.
24. Macquarie had earned substantial fees for the accommodation it was providing ArcelorMittal and all its costs including stamp duty were effectively paid by ArcelorMittal. Macquarie was also indemnified against all losses and liabilities, including, if the Panel required it, a mandatory offer. Macquarie also undertook to ArcelorMittal to support it in any effort to restore the public float and the lifting of the temporary suspension of the shares in China Oriental.
25. The arrangements between ArcelorMittal and Macquarie did not mention any other instance where Macquarie's cooperation would be sought through the exercise of the voting rights attaching to the shares in China Oriental. That would have made the existence of a concert party arrangement all too obvious. Concert parties seldom document their arrangements. In this regard, reference was made to the Guinness/Distillers decision of the London Panel where a concert party arrangement could be confirmed by no more than a nod and a wink. While the Panel's own decision in the matter of Kong Tai International Holdings Limited [Decision of 24th June, 1999] qualified the Guinness expression of a nod and a wink to exclude something momentary or fleeting, the arrangements did not have to be explicit for them to exist. While there was no agreement to vote together, the advisers of Macquarie had themselves advanced the idea that Macquarie generally does not exercise the votes attaching to the shares in which it invests, so ArcelorMittal could be assured at least of its neutrality. Further, ArcelorMittal was incentivised to develop a business relationship with Macquarie by the fee rebate arrangements for any subsequent investment banking transaction advised by it. Conversely in developing an investment banking relationship Macquarie was incentivised to cooperate with ArcelorMittal.
26. In summary, the arrangements between ArcelorMittal and Macquarie were strongly indicative of a concert party arrangement and certainly the presumption of acting in concert had not been rebutted.
27. The third contention was that the arrangements negotiated by ArcelorMittal resulted in significant changes to the concert party group. If ING and DB were previously acting in concert with ArcelorMittal, at some time before 30th April, 2014, DB had decided that it wanted to terminate these arrangements and, by doing so, gave notice that it was no longer a concert party. So before Macquarie acquired its shareholding in China Oriental, the old concert party had reduced its interest from some 47% to 39.5% of the voting rights attaching to shares in China Oriental and the purchase of shares by Macquarie, as a new concert party member, raised the concert party's aggregate holding back to 47%, thereby incurring a mandatory offer obligation under Rule 26.1(d).
28. An alternative argument would be to apply the principles used by the Panel in the matter of Wing Hang Bank Limited [Decision of 29th

DB. Having said this, the arrangements were very similar to the original arrangements with the banks. While the parties were unsure why they had settled upon HK\$1.70 per share as the price of the put option, the price had apparently been the subject of negotiation. It would seem, however, that it was the minimum price that ArcelorMittal was prepared to sell an interest in China Oriental and it would be a price which was not artificially depressed by the prospect of a prolonged suspension.

36. Notwithstanding the arrangements with the banks and Macquarie, ArcelorMittal continued to reflect its interest in China Oriental as a 47% held associate. A note in its most recent accounts explained that it had not "derecognized" the 17.4% shareholding in China Oriental, as ArcelorMittal retained a significant exposure to the risks and rewards of this investment through the put options.
37. Macquarie was adamant that it was not simply warehousing the shares in China Oriental or providing a "safe harbour" for them. It had the complete freedom to vote the shares as it wished and the undertaking to support ArcelorMittal in any effort to restore the public float did not alter its freedom to vote on any other matter. Although Macquarie generally did not vote the shares it held, the shareholdings that it held tended to be small relative to the issued capital of the companies in which it invested, the majority being well below 1%. If there were proposals which could increase the value of the investment, Macquarie would vote to support them. When it entered into the arrangements with ArcelorMittal, it had believed there was genuine upside potential in the shares in China Oriental. In agreeing to the arrangements it had looked at the published information on China Oriental and noted in particular its net asset value per share which was substantially higher than HK\$1.70 per share. What Macquarie had not appreciated at the time the arrangements with ArcelorMittal were being negotiated was that the prospect of any agreement between ArcelorMittal and

40. Both the Wing Hang Bank Limited and Hong Kong Aircraft Engineering Company Limited matters were very different. In the first the arrangements were designed to consolidate the position of the Fung family. When the Bank of New York wanted to dispose of a much larger percentage of the voting rights, than is now held by Macquarie in China Oriental, part was sold to the Fung family. Further, there were contractual arrangements between the members of the concert party which clearly strengthened

47. Given the similarity of the arrangements, it would follow that both ING and DB were also parties presumed to be acting in concert with ArcelorMittal. Throughout its existence, the concert party held 47% of the voting rights attaching to shares in China Oriental.
48. The Panel also concluded that the completion of the agreements between DB and ArcelorMittal on the one hand and ArcelorMittal and Macquarie on the other did not