

TAKEOVERS AND MERGERS PANEL

Far East Aluminium (Holdings) Limited

Panel decision in relation to the application of Rule 26.3 of the Takeovers Code

Introduction

1. The Panel met on 30 March 1999 to consider a referral by the Executive in connection with Far East Aluminium (Holdings) Limited ("FEAH"), a company listed on The Stock Exchange of Hong Kong Limited. The referral was made by the Executive to the Panel for a ruling pursuant to paragraph 10 of the Introduction to the Takeovers Code (the "Code") as it considered that an important and novel point was at issue. The key issue was whether the proposed offer price should take into account amounts paid by the offeror and a party acting in concert with it under pre-existing guarantees.

Facts

2. In January 1995, Panorama International Limited ("Panorama") borrowed HK\$280,000,000 (the "Loan") from CEF (Capital Markets) Limited (the "Lender") to finance its acquisition of control and the making of a general offer for FEAH. The term of the Loan was one year, and was secured by Panorama's entire interest in FEAH, 225,771,900 shares or 75% in February 1995 and currently 220,911,900 shares or 60.14%.
3. Far East Wagner (BVI) Limited ("FEW"), the immediate holding company of Panorama, provided a guarantee in favour of the Lender for the full amount of the Loan. FEW was held as to 65% indirectly by Mr. and Mrs. K. K. Wong, the founding shareholders of FEW, and 35% indirectly by Leading Point Investment Limited ("Leading Point"). The

4. When the Loan was due in January 1996, Panorama failed to repay the Loan and the outstanding balance of the Loan was extended for another year.
5. In January 1997, Panorama failed to repay the outstanding balance again. After a series of negotiations, Panorama sold part of the pledged shares to repay part of the Loan. The balance of HK\$120,000,000 was rolled-over to January 1998 with the support of a guarantee provided by Leading Point in favour of the Lender in October 1997 for the full amount of the Loan. Leading Point, indirectly holding 35% of FEW, was in turn indirectly held by, inter alia, China National Aero-Technology Import & Export Corporation Limited ("CATIC"), Cheung Kong Holdings Limited ("CKH"), and CEF Holdings Limited ("CEF Holdings").

¹ CKH's attributable interest in Leading Point includes that of Longhin International Limited as Longhin's shares in Kash Rich Investments Limited were charged to CKH (via Beauty Queen Limited which had advanced a loan to Longhin) and Longhin was in default under the loan.

8. Before this hearing, the Lender informed Panorama that no further extension would be given and the Loan was overdue. The outstanding balance of the Loan at the time of the hearing was HK\$120,000,000 and was secured by a charge over the shares of FEAH held by Panorama. In summary, at the time of hearing, the Loan was secured by the following guarantees:
 - i. FEW for the full amount of the Loan;
 - ii. Leading Point for the full amount of the Loan;
 - iii. CATIC Finance for a maximum of HK\$58,776,000 or such lesser amount representing 48.98% of the Loan; and
 - iv. CKH for a maximum of HK\$27,552,000 or such lesser amount representing 22.96% of the Loan.

9. It was agreed that CATIC HK Limited ("CATIC HK"), a wholly owned subsidiary of CATIC, would acquire from Panorama approximately 51% of FEAH and Beauty Queen Limited ("Beauty Queen"), a wholly owned subsidiary of CKH, would acquire the remaining 9.14% of FEAH from Panorama (the "Acquisition") both at a price of HK\$0.23 per share (the "Acquisition Price"). The shareholding structure of FEAH after the Acquisition is set out in **Schedule 3**.

10. Panorama would use the total consideration of HK\$50,810,000 (220,911,900 shares at HK\$0.23 per share) to repay the Loan. The Lender would then release the pledged shares after CATIC and CKH injecting new funds in a total sum of HK\$69,190,000 into Leading Point to repay the Loan in full. The new funds would be injected in the same proportions as the respective guarantee obligations of CATIC Finance and CKH. Hence, CATIC and CKH would come up with additional sums of HK\$47,110,000 and HK\$22,080,000 respectively. In return, CATIC's interest in Leading Point would increase from 48.98% to 68.03% and CKH would

interest in CEF Holdings, the remaining 50% interest was held by the Canadian Imperial Bank of Commerce. CEF Holdings was also a shareholder of Panorama through its indirect interest in Leading Point.

12. CICC, on behalf of CATIC HK, applied for a ruling from the Executive that the price per share for the general offer resulting from the Acquisition will be equivalent to the Acquisition Price at HK\$0.23 per share. The Executive considered that an important and novel point was at issue and referred the matter to the Panel.
13. The shares of FEAH had been illiquid, and had only been traded on five days from the beginning of the year to 25 March 1999. The price was in the range of HK\$0.24 to HK\$0.25 per share in early January 1999. After FEAH issued an announcement on 25 January 1999 on the proposed change of shareholding and loss warning, the price fell further to HK\$0.19 per share. The closing price of the shares had been at HK\$0.17 from 3 February 1999 to 25 March 1999.
14. While FEW and Leading Point both guaranteed the full amount of the Loan, it was unlikely that they had the resources to repay the Loan in full. The two guarantors that were of substance were CATIC Finance and CKH, who had on a several basis, guaranteed HK\$58,776,000 and HK\$27,552,000 respectively (a total of HK\$86,328,000).
15. If the Lender decided to call on the guarantees provided by CATIC Finance and CKH, the balance of the Loan, i.e. a shortfall of HK\$33,672,000 (HK\$120,000,000

17. The proposed offer price of HK\$0.23 per share was at a 21.8% discount from the adjusted net asset value of HK\$0.294 of FEAH as of November 1998. It was also at a 6% discount from the closing price of HK\$0.245 on 11 January 1999, two days before the filing of the application with the Executive. The market price on 24 March 1999 was HK\$0.17 per share.

The Issue

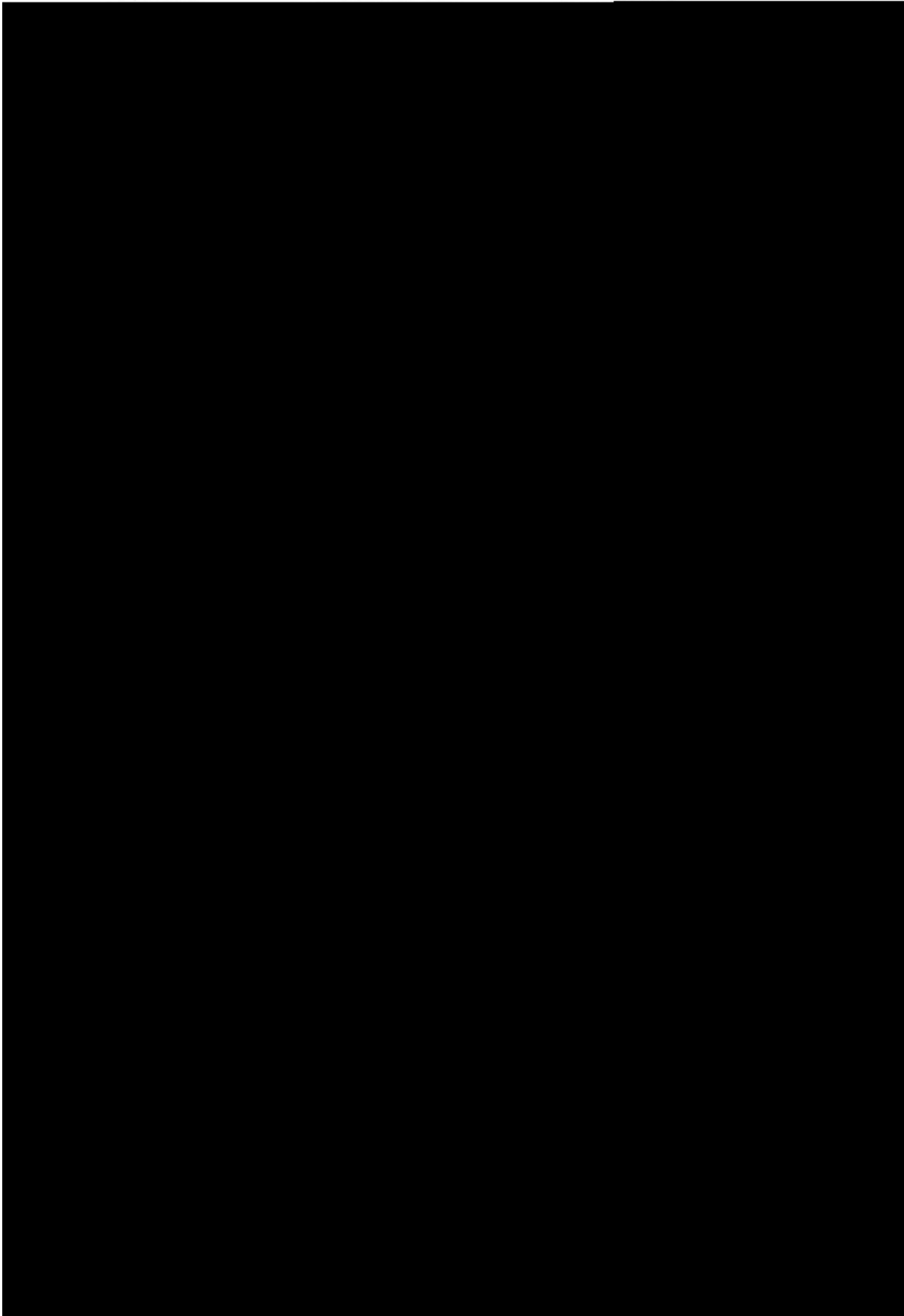
18. Rule 26.3(a) of the Code provides that .

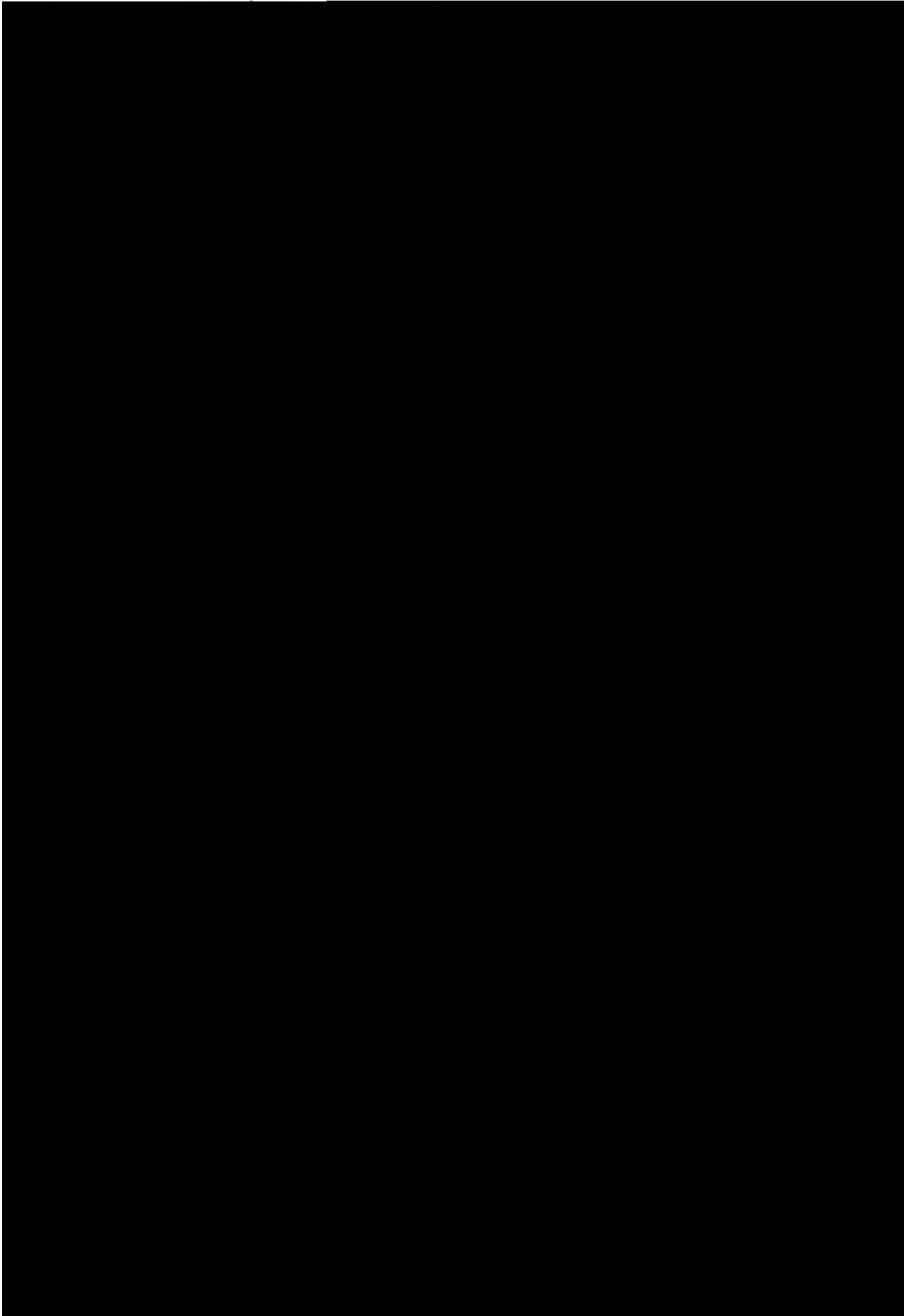
at not less than the highest price paid by the offeror or any person acting in concert with it for voting rights of the offeree during the offer period and within 6 months prior to its commencement."

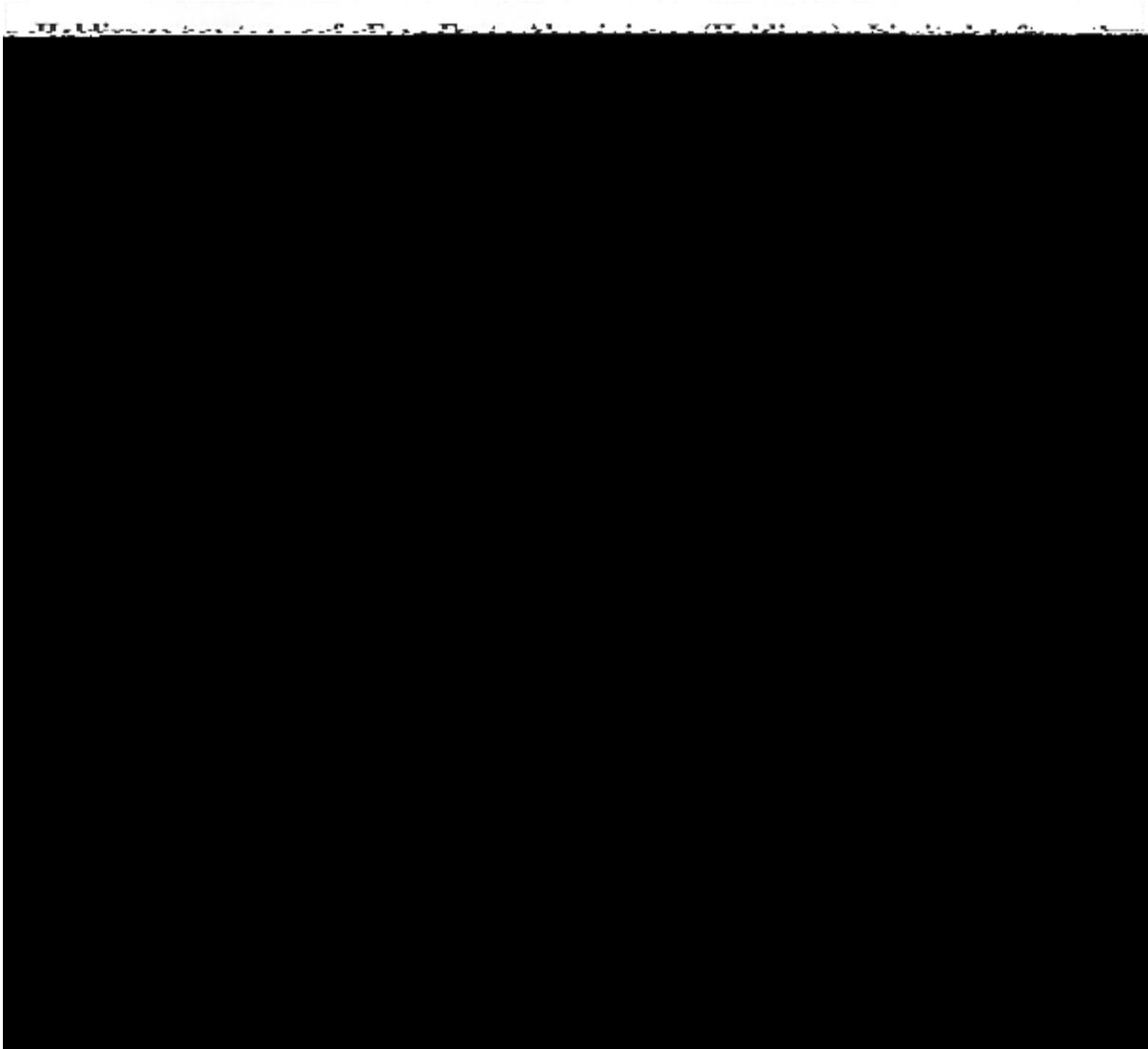
19. The fundamental issue is whether the payments under the guarantees by CATIC Finance and CKH² were to be regarded as part of the "price paid by the offeror or any person acting in concert with it".

20. Both the Applicant and the Executive submitted that the Loan was a normal commercial

²The Applicant and CKH admitted that they were parties acting in concert.







**Holding structure of Caspiana International Limited after the Acquisition and

