

PANEL ON TAKEOVERS AND MERGERS

Panel Decision

In relation to a referral to the Takeovers Panel

by the Executive for a ruling as to whether an announcement by

Singapore Telecommunications Limited ("SingTel") is required

The Panel met on Wednesday, 10th May 2000 to consider a referral by the Executive pursuant to Section 10 of the Introduction to the Hong Kong Code on Takeovers and Mergers (the "Code") for a ruling on whether or not SingTel would be required to issue an announcement clarifying its current position vis-a-vis a possible bid for Cable & Wireless HKT Limited ("CWHKT"). In view of the urgency of the matter and the interest of the investing public, the Executive referred this matter to the Panel for a ruling pursuant to section 10.1 of the Introduction to the Code as it considers that there is a particularly important point at issue.

Background and facts

On 24th January 2000, CWHKT announced that it was advised that Cable and Wireless plc ("C&W") and SingTel were in discussions, which if successfully concluded, would lead to a proposed merger of equals between CWHKT and SingTel.

On 11th and 12th February 2000, Pacific Century Cyberworks ("PCCW"), CWHKT and C&W respectively, issued approach announcements which stated that PCCW had notified C&W that PCCW intended to propose a merger with CWHKT.

On 29th February 2000, PCCW announced its intention to make a voluntary conditional offer to acquire the entire issued share capital of CWHKT. The announcement stated that the acquisition might be implemented by way of a scheme of arrangement between CWHKT and the shareholders of CWHKT. The announcement also stated that C&W, holder of 54% of the voting rights of CWHKT, had entered into an irrevocable undertaking, subject to certain conditions and qualifications, to recommend to all C&W shareholders that they vote in favour of the resolutions to be proposed at a C&W

shareholder's meeting to approve the disposal.

Also on 29th February 2000, SingTel announced that it had withdrawn from discussions on a possible merger between SingTel and CWHKT. On 4th March 2000, SingTel announced that it would keep the matter under review and might reconsider its position in the light of the progress of the proposed offer by PCCW and the circumstances in which C&W's undertaking would lapse. The 4th March 2000 announcement also noted that SingTel hence continued to be subject to the provisions of the Code. A copy of the announcement dated 4th March 2000 is annexed as **Appendix 1**.

On 26th April 2000, the Wall Street Journal reported that SingTel and News Corp were considering making a bid for CWHKT which could be valued at more than \$30 billion. Reuters and Bloomberg quoted the article on the same day.

The share price of CWHKT (which had dropped by 0.29% on 25 April 2000) increased by 4.39% on 26th April and another 4.48% on 27th April. The share price of PCCW dropped by 4.29% and 3.36% on 25th and 26th April respectively but increased on 27th April by 3.86%.

Meanwhile, on 26th April 2000, in response to enquiries by the Executive, Goldman Sachs (Asia) L.L.C. ("Goldman"), financial advisers to SingTel, confirmed that there had been no development which would require a public announcement to be made by SingTel.

On 5th May 2000, the Financial Times reported that SingTel was seeking to enlist a Chinese partner as it was considering re-launching its bid for CWHKT. As a result, the Executive immediately conducted further enquiries during which it became apparent that on 28th April and 2nd May 2000, Goldman had made two telephone calls to Greenhill & Co ("Greenhill"), the UK financial advisers to C&W and Merrill Lynch & Co ("Merrill"), financial advisers to C&W, respectively. (Although it is not clear on the evidence before the Panel whether the telephone call to Merrill took place on 1st, 2nd or 3rd May 2000, little appears to rest on this.)

Greenhill's and Merrill's response to the Executive's enquiries

In response to enquiries by the Executive, Greenhill confirmed that it had received a telephone call from Goldman on 28th April 2000, the purpose of which was to ensure that channels of communication were open in the event that SingTel wanted to contact C&W with a revised proposal for CWHKT. Similarly, Merrill confirmed that Goldman had telephoned it on 2nd May 2000 and stated that Goldman's objective was to put a new

SingTel proposal to Merrill by the end of the following week.

Goldman's response to the Executive's enquiries

In response to enquiries raised by the Executive, Goldman accepted that there had been some communication between it and Greenhill and Merrill in the two weeks leading to 5th May although it suggested that this consisted of innocuous and brief telephone conversations. Goldman confirmed that its contact with Greenhill and Merrill was intended to re-open channels of communication in case these were required again if material changes were made to the terms of PCCW's potential offer for CWHKT due to PCCW's falling share price. Goldman completely disagreed with Greenhill and Merrill's inference that the conversations amounted to more than this.

Following its enquiries, the Executive orally ruled that a clarification announcement should be issued by SingTel under the Code. Goldman did not agree and SingTel declined to issue an announcement. In view of the urgency of the matter and the interest of the investing public, the Executive referred this matter to the Panel.

The hearing

The Panel considered the written submissions of the Executive and SingTel, together with the opening and closing submissions and other representations made by the Executive and by Goldman, on behalf of SingTel, during the hearing.

The requirements of the Code

The obligation of persons involved in takeover and merger activity in Hong Kong, including potential offerors, to keep the market properly informed is contained in General Principle 6 of the Code which states that:

"All persons concerned with takeovers and mergers should make full and prompt disclosure of all relevant information and take every precaution to avoid the creation or continuance of a false market. Parties involved in offers must take care that statements are not made which may mislead shareholders or the market."

The specific rule which requires an offeror or potential offeror to make an announcement

The Panel then had to decide whether there were reasonable grounds to conclude that the actions of SingTel had led to this situation. In this regard, the telephone calls made by Goldman to Greenhill and Merrill on respectively 28th April and 2nd May assume considerable importance. Goldman kept no record of its own of these conversations. On the other hand, both Greenhill and Merrill's records indicate that they understood from these conversations that Goldman was working on a new proposal involving News Corp or an affiliate of News Corp, which it might be in a position to put to C&W in a matter of days, although there was no certainty that it would do so.

The telephone conversations to Greenhill and Merrill and Goldman's representations to the Panel

Greenhill's note of the telephone calls of 28th April and 2nd May, which was written on 7th May at the request of the Executive and approved by Merrill, records that in the 28th April telephone call Mr. Joseph Ravitch of Goldman wanted *"to ensure that channels of communication were open in the event that they [Goldman] wanted to contact their [Greenhill's] client, Cable & Wireless plc ("C&W"), with a revised proposal for Cable & Wireless HKT ("HKT")."* The note also records Goldman's reply that *"any proposal would be 'clear, compelling and certain' and that they might simply present us [C&W's advisers] with a contract for C&W's 54% holding in HKT, with an offer being made to all shareholders."* The note mentions that *"He [Mr. Joseph Ravitch] talked of bidders (in the plural) "*.

Of the 2nd May conversation with Merrill, the note recalls that Goldman *"were hopeful they would be in a position to contact us [C&W's advisers] next week with a proposal for HKT, which would involve Singapore Telecom and a "Murdoch" (as it was put to us [C&W's advisers] - we do not know which legal entity)." An e-mail from Merrill sent on 3rd May, the day after Goldman contacted them, supports this recollection of the telephone conversation and indicates that "the proposal would involve Rupert Murdoch who would probably be involved in making any proposal. . [and that] his [Mr. Joseph Ravitch's] objective was to buy our [C&W's] 54% stake for cash or largely cash."* Such an offer would be substantially different from that proposed by SingTel in late January, 2000, in which News Corp was to have a subsidiary role and the transaction was to be a merger of two companies rather than an outright acquisition.

Goldman represented in the strongest terms that the telephone conversations with Greenhill and Merrill were not a prelude to a firm proposal being made shortly thereafter.

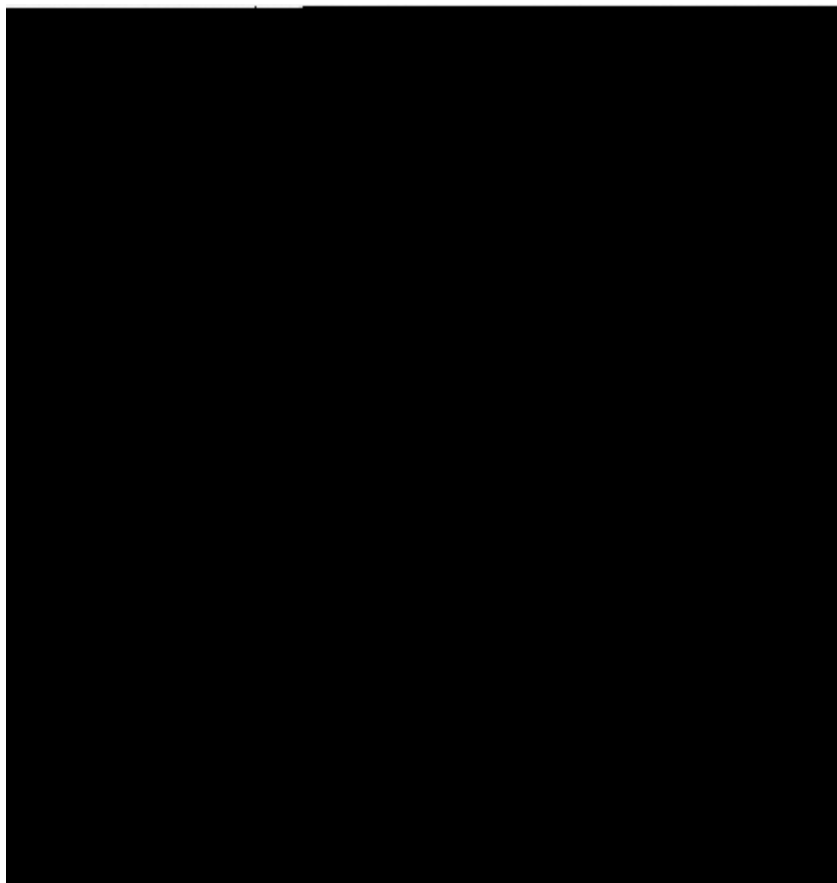
Mr. Joseph Ravitch told the Panel that "*In order to answer our [Goldman's] client's questions more effectively, we felt we wanted to test out Cable & Wireless's reactions through talking to their advisors... you get subtle hints and messages in these conversations from the advisors.*" Mr. Ravitch also told the Panel that "*[his] client had not undertaken any firm proposal at that time and did not have a view as to valuation, did not have an intention to bid .*" At another point, he stated "*the idea of somehow a qualitative difference in participation by News Corp [from the first proposal] would be impossible*" Regarding the conversation with Merrill, Mr. Ravitch said, "*In fact, I can tell you unequivocally there was no firm proposal. The notion of some sort of new kind of joint bid between the two [SingTel and News Corp] did not exist.*"

In the light of these representations, it appeared that any announcement made by SingTel at the insistence of the Panel would be in substance similar to that made on 4th March. A copy of the 4th March announcement is annexed as **Appendix 1**. If this were to be the case, it would be a confirmation that there had been no substantive change in the position since 4th March. It would also support the contention that the speculative newspaper coverage on 26th April was not a result of SingTel's actions. In these circumstances, it would not appear that the requirements of Rule 3.1(a) had been met.

The 5th May press article

The Executive had also raised the matter of a newspaper article appearing in the Financial Times on 5th May which reported that SingTel was seeking to enlist a Chinese partner in making a revised proposal for C&W's shareholding in CWHKT. News Corp was again mentioned in this context, as well as a higher cash component for the bid. It does not appear that this article led to any unusual trading activity in the shares of either CWHKT or PCCW. Further, apart from the article itself, there was no evidence to link the actions of SingTel or its advisers to the publication of the article. Neither of the telephone

decided that there was no requirement under Rule 3.1(a) for SingTel to make an announcement in response to either the 26th April or 5th May newspaper articles as it did not appear that a new proposal had been formulated and was about to be put to C&W and the situation remained roughly unchanged from the time of its latest announcement made on 4th March. The Panel stressed that were the position to change and this were to become known to the market, an announcement would be required. Further it was made clear the decision was also made on the basis that the representations made by SingTel's advisers on its behalf, to the extent that they were relevant or related to SingTel, were



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Appendix 2

Difference between PCCW offer and HKT

HKT Share Offer Combination Offer Difference

	HKT	Share Offer	Combination Offer	Difference
03/14/2000	22.70	23.00	22.41	0.24
03/15/2000	22.20	23.11	22.27	0.43
03/16/2000	21.40	22.40	21.97	(0.14)
04/10/2000	18.60	17.78	18.89	(0.30)
04/11/2000	18.30	17.39	18.64	(0.34)
04/12/2000	20.80	17.39	18.64	2.16
04/13/2000	19.55	18.00	19.42	0.13
04/14/2000	19.10	18.11	19.10	(0.00)

