

## **TAKEOVERS AND MERGERS PANEL**

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*rights of the offeree during the offer period and within 6 months prior to its commencement ...”*

### **Ruling by the Executive**

5. On 22 March 2002 the Executive orally communicated to Mr Wong through his financial adviser, that it did not believe that Mr Wong or WWL was acting in concert with Well Success in relation to Well Success’s acquisition of control of Symphony. On 6 April 2002 the Executive issued a written ruling to Mr Wong confirming its decision.

### **Decision**

6. The Panel carefully considered the written and oral representations before it including evidence given by Mr Wong during the Panel meeting.
7. The first issue for the Panel to decide was whether Mr Wong, WWL and Well Success were acting in concert in relation to the acquisition of shares in Symphony. Acting in concert is defined in the Definition section of the Takeovers Code as:

*“Persons acting in concert comprise persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate to obtain or consolidate “control” (as defined below) of a company through the acquisition by any of them of voting rights of the company.”*

8. The Panel noted that Mr Wong and WWL were unaware of any arrangements by Well Success or its beneficial owners that led to the making of the Offer until Well Success’s financial adviser notified the board of Symphony of its possible offer in a letter dated 8 February 2002. The Panel also noted that Mr Wong accepted that neither he nor WWL were acting in concert with Well Success after the receipt of the Offer by Symphony. On the evidence presented to it, the Panel did not find that there was any concert party relationship at any relevant time between Well Success, Mr Wong and WWL in relation to the acquisition of shares in Symphony.
9. In view of this decision, the Panel took the view that it was not necessary for it to consider whether or not the acquisition of Symphony shares by Mr Wong referred to in paragraph 4 above was a relevant acquisition for the purposes of Rule 26.3 of the Takeovers Code and accordingly, expressed no view on this.
10. The Panel therefore affirmed the ruling of the Executive with regard to this matter.

Dated 13 May 2002