

**Statement on ruling of Takeovers Executive (“Executive”) of the Securities and Futures
Commission regarding whether certain parties were acting in concert
in respect of PCCW Limited**

Application and ruling

1. On 2 November 2006 Mr Francis Leung (“**Mr Leung**”) applied to the Executive, through his advisers, for a ruling that for the purposes of the Takeovers Code:
 - (a) Mr Leung and Fiorlatte Limited (“**Fiorlatte**”) (a company wholly-owned by Mr Leung) were not acting in concert with Telefónica S.A. (“**Telefónica**”) or China Network Communications Group Corporation (“**CNC**”); and
 - (b) the Li Ka Shing Foundation Limited (“**HK Foundation**”) and/or the Li Ka Shing (Canada) Foundation (“**Canada Foundation**”) (together referred to as the “**Foundations**”) were not acting in concert with Telefónica or CNC,in relation to certain proposed transactions in shares of PCCW Limited (Stock Code 0008) (“**PCCW**”).
2. The outcome of the application was important at the time it was made because, if the parties were found to be acting in concert, a number of proposed transactions (including the proposed sale of 22.65% of the issued share capital of PCCW to Mr Leung) may have resulted in the enlarged concert group holding an aggregate of 30% or more of the voting rights of PCCW and in consequence a general offer obligation would have been triggered under Rule 26.1 of the Takeovers Code. In any event on 30 November 2006 PCCW announced that the proposed sale to Mr Leung had not received the requisite shareholder approval and therefore the proposed transactions did not go ahead.
3. Following receipt of the application on 2 November 2006 the Executive raised numerous enquiries with the various parties. This statement refers to the facts which emerged as a result of these inquiries on which the Executive made its determination. The application letter of 2 November 2006 and the subsequent submissions from the parties are together referred to as the “**Application**”.
4. On 10 November 2006 the Executive ruled that, at the time of the ruling, there was insufficient evidence to conclude that Mr Leung and/or Fiorlatte and/or Mr Li Ka Shing (“**Mr KS Li**”) and/or the HK Foundation and/or the Canada Foundation on the one hand and Telefónica and/or CNC on the other were parties acting in concert as defined in the Codes on Takeovers and Mergers and Share Repurchases (“**Codes**”).
5. Section 16.3 of the Introduction to the Codes provides that “*Subject to confidentiality considerations, it is the policy of the Executive to publish its important rulings and interpretations of the Codes, and the reasons for them, so that its activities may be understood by the public. There may be announcements of rulings in specific cases where the rulings are considered to have general application, or statements of policy which may take the form of Practice Notes setting out in greater detail the Executive’s practice and interpretation of the Codes.*” The ruling given in the present case is an important ruling and, accordingly, the Executive now publishes this statement.

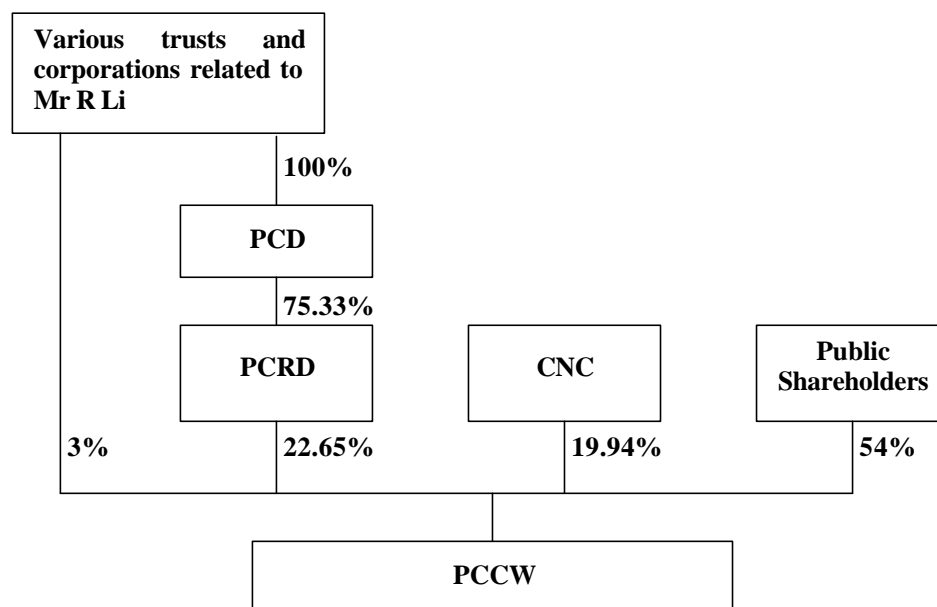
Background and facts

6. The Executive found the following facts on the basis of the evidence before it.

(“**Mr R Li**”), holds an interest in approximately 75.33% of PCRD.¹ At all relevant times Mr R Li was the Chairman and an executive director of both PCCW and PCRD. Mr KS Li is Mr R Li’s father.

7. The Acquisition agreement was subject to, amongst other things, the approval of PCRD’s shareholders in a general meeting which was scheduled to take place on 30 November 2006.

Shareholdings in PCCW at time of Application



8. CNC is a state-owned enterprise in the PRC. CNC acquired its 19.94% interest in PCCW through a subscription of new shares in January 2005 (“**Subscription**”).²
9. Telefónica is an international telecoms company headquartered in Spain. At the time of the Application, Telefónica held a 5% interest in China Netcom Group Corporation (Hong Kong) Limited (“**CNCHK**”, a Hong Kong listed company) and had a seat on its board. CNC holds an interest of 75% in CNCHK. Telefónica formed a strategic alliance with CNCHK in July 2005 as a result of its investment in CNCHK.
10. Mr Leung was formerly a managing director of Citigroup Global Markets Asia (“**Citigroup**”) and held the title of Chairman (Asia). Mr Leung intended to invite third parties to join him in his investment in PCCW via a private equity fund. However Mr Leung was not able to implement such arrangements as a number of potential investors indicated that they were looking for greater liquidity than could be provided by a private equity fund. Mr Leung then considered breaking the Subject Shares into smaller blocks.

¹ In addition to the Subject Shares, at the time of the Application, Mr R Li was interested in approximately 3% of the issued share capital of PCCW held through trusts and corporations other than PCRD.

² On 20 January 2005 PCCW and CNC announced that the Executive had ruled that it did not consider CNC to be acting in concert with PCCW substantial shareholders (i.e. PCRD and companies controlled by Mr R Li and his related trusts) as a result of the Subscription.

11. On 2 November 2006 Mr Leung submitted the request for a ruling to the Executive referred to in paragraph 1 above. He also informed the Executive that upon completion of

full text of the definition of “*acting in concert*” and the nine presumptions is set out in **Appendix 1** to this statement.

Concert party issues

17. **“Leung/ KS Li group”** – Class (9) of the definition of acting in concert presumes the following persons to be acting in concert:

“a person, other than an authorised institution within the meaning of the Banking Ordinance (Cap. 155) lending money in the ordinary course of business, providing finance or financial assistance (directly or indirectly) to any person (or a person acting in concert with such a person) in connection with an acquisition of voting rights (including any direct or indirect refinancing of the funding of the acquisition).”

18. The Executive

before it and went on to consider whether, as a matter of fact, the relevant persons were acting in

arrangement or understanding (whether formal or informal) existed between them and any member of the CNC/Telefónica group.

27. The Executive also paid significant regard to the representations and signed confirmations provided by the relevant parties including:
- (a) Confirmations regarding the nature of the discussions between the relevant parties and the absence of any relevant agreement or understanding (whether formal or informal) concerning the acquisition or consolidation of control of PCCW.
 - (b) Confirmations of the absence of any relevant discussions, agreements or understandings between any of the relevant parties in relation to appointments to the board of PCCW.
 - (c) Confirmations that CNC was independent from and had no relationship with Mr KS Li (except in respect of usual business arrangements concerning connectivity between networks of CNC (and its subsidiaries) and telecom companies associated with Mr KS Li). It was also confirmed that none of such arrangements would create any presumption of acting in concert between CNC and Mr KS Li and/or companies associated with him under the Codes nor were they material in considering whether CNC was acting in concert with Mr KS Li.
 - (d) Confirmations that Telefónica had no past or present business or other relationship with any of the relevant parties other than during negotiation of the proposed On-Sales and in this regard, only in the capacity as a potential purchaser of PCCW shares from Mr Leung/Fiorlatte.
 - (e) Confirmations that Telefónica had no past or present business or any other relationship with Mr Leung before the initial meeting arranged by CNC.
28. The Executive also paid considerable attention to the terms of the public announcements that CNC and Mr Leung agreed to issue.⁹ CNC proposed to issue an announcement confirming amongst other things that:
- (a) CNC was not acting in concert with any person (apart from Telefónica) in respect of its shareholding in PCCW;
 - (b) CNC had not, in regard to such shareholding, entered into any agreement or arrangement with any of Mr Leung, the HK Foundation, the Canada Foundation and their representatives, Mr KS Li and Mr R Li (apart from the previously disclosed shareholders agreements dated 19 January 2005 which did not render them parties acting in concert); and
 - (c) CNC and persons acting in concert with it did not have control (within the meaning of the Takeovers Code) over PCCW, and CNC did not intend to control the board of PCCW and would not seek to do so in future unless CNC gained control of PCCW in accordance with the Takeovers Code.
29. Mr Leung proposed to issue an announcement providing an up-date of the progress of the Acquisition and On-

involve the vendor selling part only of his holding to the purchaser and retaining the remaining shares. In these circumstances the Executive will be concerned to see whether the arrangements between the purchaser and vendor effectively allow the purchaser to

- (b) that neither Mr KS Li nor any company controlled by him was or had been involved with the discussions between CNC and Telefónica in connection with their strategic alliance and related arrangements;
- (c)

substantial holding in a company should press for board representation and perhaps make the vendor's support for this a condition of purchase. Accordingly, these factors, divorced from other evidence of a significant degree of control over the retained voting rights, would not lead the Executive to conclude that a general offer should be made.

Ruling

39. On the basis of the above, on 10 November 2006, the Executive issued the ruling referred to in paragraph 4 above. The ruling also clarified that the Executive considered Mr Leung, Mr KS Li and the Foundations to be acting in concert in respect of PCCW and confirmed that the Executive would continue to monitor developments in the case. The Executive requested to be advised immediately if there was any material change to the information or representations made so that it could decide on whether its ruling remained valid.

17 May 2007

DEFINITIONS

Acquisition of voting rights: Acquisition of voting rights includes the exercise of control or direction over voting rights other than by way of a revocable proxy given for no or nominal consideration for the purpose of one meeting of shareholders only.

Acting in concert: 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.

Without prejudice to the general application of this definition, persons falling within each of the following classes will be presumed to be acting in concert with others in the same class unless the contrary is established:-

- (1) a company, its parent, its subsidiaries, its fellow subsidiaries, associated companies of any of the foregoing, and companies of which such companies are associated companies;
- (2) a company with any directors (together with their close relatives, related trusts and companies controlled[#] by any of the directors, their close relatives or related trusts) of it or of its parent;
- (3) a company with any of its pension funds, provident funds and employee share schemes;

Note: Class (3) does not apply to an employee benefit trust. The Executive will apply Note 20 to Rule 26.1 to determine whether the directors and shareholders of a company are acting in concert with the trustees of an employee benefit trust of the same company.

- (4) a fund manager (including an exempt fund manager) with any investment company, mutual fund, unit trust or other person, whose investments such fund manager manages on a discretionary basis, in respect of the relevant investment accounts;
- (5) a financial or other professional adviser (including a stockbroker)* with its client in respect of the shareholdings of the adviser and persons controlling[#], controlled by or under the same control as the adviser (except in the capacity of an exempt principal trader);
- (6) directors of a company (together with their close relatives, related trusts and companies controlled[#] by such directors, their close relatives and related trusts) which is subject to an offer or where the directors have reason to believe a bona fide offer for their company may be imminent;
- (7) partners;

- (8) an individual (including any person who is accustomed to act in accordance with the instructions of the individual) with his close relatives, related trusts and companies controlled[#] by him, his close relatives or related trusts; and
- (9) a person, other than an authorised institution within the meaning of the Banking Ordinance (Cap. 155) lending money in the ordinary course of business, providing finance or financial assistance (directly or indirectly) to any person (or a person acting in concert with such a person) in connection with an acquisition of voting rights (including any direct or indirect refinancing of the funding of the acquisition).

TAKEOVERS CODE

Note 7 to Rule 26.1:

7. *Vendor of part only of a shareholding*

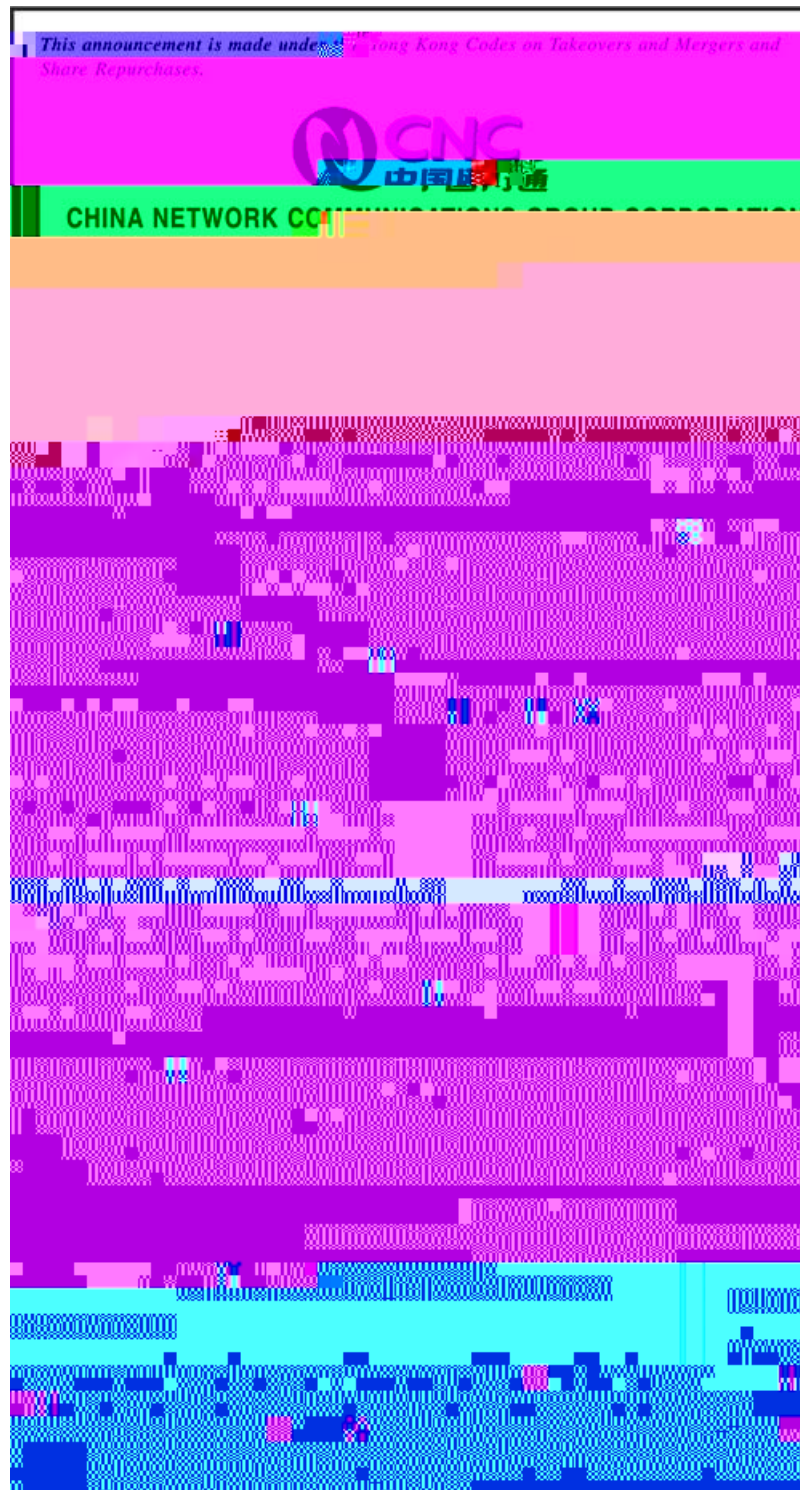
Shareholders sometimes wish to sell part only of their holdings or a purchaser may be prepared to acquire part only of a holding. This arises particularly where an acquirer wishes to acquire under 30%, thereby avoiding an obligation under this Rule 26 to make a general offer. The Executive will be concerned to see whether in such circumstances the arrangements between the purchaser and vendor effectively allow the purchaser to exercise a significant degree of control over the retained voting rights, in which case a general offer would normally be required. These concerns will also apply when the purchaser is already a member of a group acting in concert with the vendor, or when the purchaser joins such a group.

The Executive will also take into account any other transactions between the purchaser and the vendor, and between the purchaser and other members of the group acting in concert with the vendor. This could include, for example, the aggregation of transfers of voting rights to the purchaser over a period of time, or arrangements which have an effect similar to transfer, such as the underwriting by a purchaser of a rights issue which the vendor has agreed not to take up, or a placing of shares with the purchaser.

A judgement on whether such a significant degree of control exists will obviously depend on the circumstances of each individual case, but, by way of guidance, the Executive would regard the following points as having some significance:-

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- (d) *it would be natural for a vendor of part of a controlling holding to select a purchaser whose ideas as regards the way the company is to be directed are reasonably compatible with his own. It is also natural that a purchaser of a substantial holding in a company should press for board representation and perhaps make the vendor's support for this a condition of purchase. Accordingly, these factors, divorced from any other evidence of a significant degree of control over the retained voting rights, would not lead the Executive to conclude that a general offer should be made.*



ANNOUNCEMENT

Canadian Foundation (on the one hand) and Telefónica and China Network Communications

