

## **PANEL ON TAKEOVERS AND MERGERS**

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### **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**

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The Panel met on Wednesday, 10<sup>th</sup> 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 24<sup>th</sup> 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 11<sup>th</sup> and 12<sup>th</sup> 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 29<sup>th</sup> 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 29<sup>th</sup> February 2000, SingTel announced that it had withdrawn from discussions on a possible merger between SingTel and CWHKT. On 4<sup>th</sup> 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 4<sup>th</sup> March 2000 announcement also noted that SingTel hence continued to be subject to the provisions of the Code. A copy of the announcement dated 4<sup>th</sup> March 2000 is annexed as **Appendix 1**.

On 26<sup>th</sup> 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 26<sup>th</sup> April and another 4.48% on 27<sup>th</sup> April. The share price of PCCW dropped by 4.29% and 3.36% on 25<sup>th</sup> and 26<sup>th</sup> April respectively but increased on 27<sup>th</sup> April by 3.86%.

Meanwhile, on 26<sup>th</sup> 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 5<sup>th</sup> 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 28<sup>th</sup> April and 2<sup>nd</sup> 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 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> 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 28<sup>th</sup> 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 2<sup>nd</sup> 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 5<sup>th</sup> 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 before an approach has been made to the offeree company is Rule 3.1(a) which states:

*"The offeror or potential offeror must make an announcement*

- (a) *when, before an approach has been made to the offeree company, the offeree company is the subject of rumour or speculation about a possible offer or there is undue movement in its share price, or a significant increase in the volume of share turnover, and there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security, purchasing of offeree company shares or otherwise) which have led to the situation..."*

*In all cases of doubt the Executive should be consulted."*

Correctly, in the opinion of the Panel, all the parties to the hearing accepted that Rule 3.1(a) was equally applicable to a potential offeror in advance of making a second or subsequent approach to an offeree company as it was before the first approach.

The rule sets out two conditions which need to be present before a potential offeror is required to make an announcement, namely:

- (i) rumour or speculation, or undue price movement, or significant increase in turnover; and
- (ii) reasonable grounds for concluding that this has been caused by actions of whatever kind taken by the potential offeror.

At the commencement of the oral submission by Goldman, the question was raised as to whether preliminary contacts between a potential offeror and an offeree company before it had a firm intention to make an offer would of itself give rise to the requirement to make an announcement under Rule 3.1(a). The Executive answered that no announcement would be required if there had been no undue movement in the share price, no speculation and no rumours because the development had been kept confidential. The Panel agrees with this interpretation of the rule. However, this was not the case in the current matter as on 26<sup>th</sup> April and the day following, there was widely disseminated press coverage that SingTel and News Corp were planning a new takeover offer for CWHKT. On 26<sup>th</sup> and 27<sup>th</sup> April, there was unusual movement in the share prices of CWHKT in that for those two days the traded price of CWHKT shares was significantly higher than the price implied by the PCCW cash and share offer. This is evident from the tabulation prepared by Goldman and produced at the hearing which is annexed as **Appendix 2**. The first condition requiring a potential offeror to make an announcement under Rule 3.1(a) was clearly met.

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 28<sup>th</sup> April and 2<sup>nd</sup> 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 28<sup>th</sup> April and 2<sup>nd</sup> May, which was written on 7<sup>th</sup> May at the request of the Executive and approved by Merrill, records that in the 28<sup>th</sup> 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 2<sup>nd</sup> 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 3<sup>rd</sup> 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. The telephone calls were made on Goldman's initiative, after consultation with SingTel. They had spoken after the publication of the Wall Street Journal article of 26<sup>th</sup> April.

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 4<sup>th</sup> March. A copy of the 4<sup>th</sup> 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 4<sup>th</sup> March. It would also support the contention that the speculative newspaper coverage on 26<sup>th</sup> 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 5<sup>th</sup> May press article**

The Executive had also raised the matter of a newspaper article appearing in the Financial Times on 5<sup>th</sup> 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 calls made by Goldman to C&W's advisers had referred to a Chinese partner. Given the lack of linkage with SingTel, the second element of Rule 3.1(a), which requires there to be reasonable grounds that the rumour or undue market movement is the result of actions taken by the potential offeror, is not present. In the absence of reasonable grounds, the Code does not require a potential offeror as a matter of course to respond to rumour or speculation. This was a legitimate concern of SingTel and its advisers, given the quantity of press comment the takeover of CWHKT had generated.

### **The decision**

On the basis of the evidence available and the representations made to it, the Panel

decided that there was no requirement under Rule 3.1(a) for SingTel to make an announcement in response to either the 26<sup>th</sup> April or 5<sup>th</sup> 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 4<sup>th</sup> 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 fully supported by SingTel. In this regard, the Panel was given reassurance on this point by Goldman.

### **Publication of the decision**

The Panel also decided that its decision and the reasons for it should not be published while CWHKT was subject to a general offer given the possible competitive situation which could arise were SingTel to make a revised proposal to C&W and the fact that confidential information had been made available to the Panel about one potential offeror which should not be made known to other offerors or the offeree company. For these reasons and since the decision did not require any action by SingTel or its advisers, it was decided that no public statement would be made regarding the Panel's decision or deliberations until the full decision is published.

2 June 2000

SCMP 06 Mar 2000 (Mon)

*This announcement shall not constitute an offer to buy, or the solicitation of an offer to sell or subscribe for, any securities or an invitation to enter into an agreement to do any such things, nor is it calculated to invite any offer to buy, sell or subscribe for any securities.*

## SINGAPORE TELECOMMUNICATIONS LIMITED

*(Incorporated in the Republic of Singapore)*

*("SingTel")*

### ANNOUNCEMENT

SingTel announces that it has withdrawn from discussions with Cable & Wireless plc ("C&W") on a possible merger between SingTel and Cable & Wireless HKT Limited ("CWHKT") in light of the recent announcement of C&W's conditional undertaking to accept the proposed offer by Pacific Century CyberWorks Limited for C&W's shareholdings in CWHKT (the "Proposed Offer").

SingTel will keep its position under review and may reconsider its position in the light of the progress of the Proposed Offer and the circumstances in which C&W's undertaking will lapse. Accordingly, SingTel continues to be subject to the provisions of the Hong Kong Code on Takeovers and Mergers.

In the meantime, investors are strongly advised to exercise caution in dealing in the securities of SingTel and CWHKT.

By order of the Board

SINGAPORE TELECOMMUNICATIONS LIMITED

Chan Su Shan

Company Secretary

Hong Kong, 4 March 2000

*The directors of SingTel jointly and severally accept full responsibility for the accuracy of the information contained in this announcement and confirm, having made all reasonable inquiries, that to the best of their knowledge, their opinions expressed in this announcement have been arrived at after due and careful consideration and there are no other facts not contained in this announcement the inclusion of which would make any of their statements in this announcement misleading.*



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## Appendix 2

## Difference between PCCW offer and HKT

	HKT	Share Offer	Combination Offer	Difference
02/29/2000	25.95	24.82	23.44	2.51
03/01/2000	22.75	22.89	22.20	0.55
03/02/2000	22.25	23.22	22.41	(0.16)
03/03/2000	23.70	24.54	23.26	0.44
03/06/2000	24.80	26.14	24.30	0.50
03/07/2000	25.60	27.18	24.97	0.63
03/08/2000	25.45	26.69	24.65	0.80
03/09/2000	24.55	25.70	24.01	0.54
03/10/2000	23.90	24.82	23.44	0.46
03/13/2000	22.65	23.22	22.41	0.24
03/14/2000	22.70	23.00	22.27	0.43
03/15/2000	22.20	23.11	22.34	(0.14)
03/16/2000	21.40	22.40	21.88	(0.48)
03/17/2000	21.95	22.40	21.88	0.07
03/20/2000	22.00	22.89	22.20	(0.20)
03/21/2000	20.85	21.46	21.27	(0.42)
03/22/2000	20.70	21.02	20.99	(0.29)
03/23/2000	20.95	21.13	21.06	(0.11)
03/24/2000	21.65	22.62	22.02	(0.37)
03/27/2000	22.30	22.95	22.23	0.07
03/28/2000	21.75	22.40	21.88	(0.13)
03/29/2000	20.95	21.41	21.24	(0.29)
03/30/2000	20.40	20.97	20.95	(0.55)
03/31/2000	20.40	20.47	20.63	(0.23)
04/03/2000	19.15	18.93	19.63	(0.48)
04/04/2000	19.15	18.93	19.63	(0.48)
04/05/2000	17.95	16.90	18.32	(0.37)
04/06/2000	18.50	17.67	18.82	(0.32)
04/07/2000	18.95	18.44	19.31	(0.36)
04/10/2000	18.60	17.78	18.89	(0.29)
04/11/2000	18.30	17.39	18.64	(0.34)
04/12/2000	20.80	17.39	18.64	<b>2.16</b>
04/13/2000	19.55	18.60	19.42	0.13
04/14/2000	19.10	18.11	19.10	(0.00)
04/17/2000	16.85	15.58	17.46	(0.61)
04/18/2000	17.05	16.13	17.82	(0.77)
04/19/2000	17.20	15.58	17.46	(0.26)
04/20/2000	17.15	15.85	17.64	(0.49)
04/21/2000	17.15	15.85	17.64	(0.49)
04/24/2000	17.15	15.85	17.64	(0.49)
04/25/2000	17.10	15.19	17.22	(0.12)
04/26/2000	17.85	14.70	16.90	0.95
04/27/2000	18.65	15.25	17.25	1.40
04/28/2000	18.35	16.40	18.00	0.35
05/01/2000	18.35	16.40	18.00	0.35
05/02/2000	18.70	17.56	18.75	(0.05)
05/03/2000	18.60	17.61	18.78	(0.18)
05/04/2000	18.20	17.12	18.46	(0.26)
05/05/2000	18.10	17.12	18.46	(0.36)
05/08/2000	17.70	16.07	17.78	(0.08)

