

TAKEOVERS AND MERGERS PANEL

Panel Decision

Panel affirms ruling by the Executive in relation to Symphony Holdings Limited (“Symphony”)

1. The Panel met on Wednesday, 8 May 2002, to consider an application under section 9.1 of the Introduction to the Takeovers Code by Mr Gordon Wong Mo Wah (“**Mr Wong**”) and his wholly owned company, W.W.L. Limited (“**WWL**”), for a review of a ruling by the Executive dated 6 April 2002. Mr Wong is an executive director of Symphony. WWL is a shareholder in Symphony.

Salient Facts

2. On 18 February 2002, Well Success Investment Limited (“**Well Success**”) announced that on 15 February 2002 it had acquired approximately 39.74% of the issued share capital of Symphony and that accordingly it was making a general offer (“**Offer**”) for all the issued shares in Symphony (excluding those already owned by Well Success) at HK\$1.75 per share (“**Offer Announcement**”).
3. Well Success is a private investment holding company equally owned by First Dynamic International Limited (“**First Dynamic**”) and Frensham Investments Limited.¹ First Dynamic is held as to 40% by Mr Tony Sun Sun Sze, 40% by Mr David Chan Ting Chuen and 20% by Mr Alfred Ronald Li Kwok Lung. All the shareholders of First Dynamic were non-executive directors of Symphony at the time of the Offer Announcement.

Mr Wong’s application for a ruling

4. On 15 March 2002, Mr Wong applied under section 8.1 of the Introduction of the Takeovers Code to the Executive for a ruling to require Well Success to increase its offer price from \$1.75 to \$1.93 for each share in Symphony in accordance with Rule 26.3 of the Takeovers Code. Mr. Wong’s application was based on the assertion that he and WWL were acting in concert with Well Success in relation to the acquisition of control of Symphony. It followed, he argued, that the offer price of \$1.75 should be increased to \$1.93 to match the imputed price Mr Wong contended he should be regarded as having paid in connection with a conversion of his indirect shareholding in Symphony to a direct shareholding in Symphony that took place during the six months prior to Well Success launching its offer. Rule 26.3 provides that :
 - (a) *“Offers made under this Rule must, in respect of each class of equity share capital involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for voting*

¹ As Frensham Investments Limited is not relevant to the issues before the Panel it will not be further mentioned in this decision.

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