TAKEOVERS AND MERGER PANEL

Panel Decision
in relation to a review of the decision of the Takeovers Executive to waive the mandatory general offer obligation which would otherwise have arisen for Mittal Steel Holdings AG ("ArcelorMittal" and where the context requires its ultimate listed holding company) and, in the event that the decision to grant a waiver were not to be upheld, on a number of issues which may need to be addressed as to the conditions, timetable and price of the mandatory general offer and to enable the mandatory general offer to be made while being in compliance with laws and regulations in The People's Republic of China (the "PRC")

Introduction

1. The Panel met on 6th October, 2015 to review the decision made by the Takeovers Executive to waive the mandatory general offer obligation which would otherwise have arisen for ArcelorMittal upon the unwinding of the share purchase and option arrangements between it on the one hand and ING Bank ("ING") and Macquarie Bank Limited ("Macquarie") on the other in relation to shares in China Oriental Group Company Limited ("China Oriental"). In the event that the Panel decided not to uphold the decision of the Takeovers Executive to grant the waiver a number of issues arose on implementing the mandatory general offer. These were in summary:

   - whether the mandatory general offer may be made conditional upon regulatory clearance from the Ministry of Commerce of the PRC;

   - whether or not the 50% acceptance condition as required by Rule 30.2 of the Code on Takeovers and Mergers (the "Takeovers Code") should be waived in respect of the mandatory general offer;

   - the timetable for the mandatory general offer; and

   - the price at which such mandatory general offer should be made.

2. Given the Panel decided to uphold the waiver granted to ArcelorMittal by the Takeovers Executive it was not necessary for the Panel to rule on the mechanics and the price to be paid under the mandatory general offer and, accordingly, this decision is confined to the single issue of whether to uphold, alter or reverse the Takeovers Executive's decision to waive the mandatory general offer obligation.

3. The application to the Panel was made under Paragraph 10.1 of the Introduction to the Codes on Takeovers and Mergers and Share Buy-backs (the "Codes") where the Takeovers Executive may refer a matter to the Panel for a ruling, without itself giving a ruling, when it considers that there is a particularly novel, important or difficult point at issue. At the hearing itself the Takeovers Executive explained that this application related essentially to the subsequent mechanical and pricing decisions which needed to be made in the event that the Panel reversed the decision to waive ArcelorMittal's mandatory general offer obligation. The Takeovers Executive did not regard its waiver decision itself to be either novel, important or difficult. After the Takeover Executive's waiver decision was made public by the announcement made by China Oriental dated

29th May, 2015, two minority shareholders of China Oriental, Mr. Chan Pak To ("Mr. Chan") and Mr. Churk Shue Sing ("Mr. Churk") wrote to the Takeovers Executive requesting a review of this decision. The hearing of the Panel, as far as the waiver was concerned, was essentially a response to those requests for a review. As potential offeror and offeree companies respectively, ArcelorMittal and China Oriental were also invited to attend the Panel's hearing and to make submissions.

4. Reference is made by the Takeovers Executive in the reasons for its decision to the decision by the Panel made on 14th October, 2014 (the "2014 Panel decision") which also related to China Oriental and arrangements between ArcelorMittal and various banks. In response a number of the parties to the Panel hearing challenged a number of the conclusions reached by the Panel in its 2014 Panel decision. The Panel wishes to make it clear that the proceedings before it did not include a review of the 2014 Panel decision. That decision stands and is final. Given the similarity of some of the issues, the Panel considers that the 2014 Panel decision provided useful guidance and precedent in the present matter.

Background and facts

5. Following the decision of the Panel in 2007, ArcelorMittal made a mandatory general offer for all the shares in China Oriental, other than those held by parties acting in concert with it, including Mr. Han Jingyuan ("Mr. Han") the chairman of China Oriental, who held approximately 45% of its shares.

6. As a result of ArcelorMittal's mandatory general offer, it increased its shareholding to approximately 47% of the shares in China Oriental so that between it and Mr. Han, substantial shareholders held some 92% of the shares resulting in the public float falling well below the minimum required by the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the "Listing Rules").

7. In order to address the public float requirements under the Listing Rules, as it was required to do under its agreement with Mr. Han, ArcelorMittal made the following arrangements with ING and Deutsche Bank ("DB") (collectively the "banks"):

   - it sold respectively to ING and DB, 9.9% and 7.5% of the shares in China Oriental at a price of HK$5.7938 per share;

   - ArcelorMittal granted each of the banks a put option under which it agreed to acquire all of the shares purchased by the banks at the original purchased price, adjusted for interest at an agreed rate of interest, less any dividends received by the banks during the three year currency of the put option which was exercisable on 30th April, 2011. This put option was fully cash collateralised, with the collateral netted off against the purchase price so that, apart from the payment of fees to the banks, no cash changed hands. Effectively ArcelorMittal had financed the full purchase price of the shares by the banks by the provision of this matching collateral; and

   - ArcelorMittal could require the banks to exercise their put options following the exercise of the call options it had been granted under its agreement with Mr. Han. This agreement terminated on 9th May, 2011 a few days after the completion of the arrangements with the banks, although there was continuing uncertainty whether certain provisions of the agreement had survived its termination.

8. At the time this arrangement satisfied the Listing Rules requirements for the public float.

9. The shares in China Oriental traded for a short period in May, 2008 at or above the purchase and option price under the arrangements with the banks.

10. In April, 2011, the arrangements with the banks were rolled over for a further three years.

11. Towards the end of 2013, the Hong Kong Stock Exchange informed China Oriental that these arrangements would no longer satisfy the public float requirements of the Listing Rules. Further, DB notified ArcelorMittal that it would not be rolling over the arrangements again and would give notice of the exercise of its put option on 30th April, 2014. ING on the other hand indicated it would renew the arrangements or enter arrangements which were broadly similar.

12. At the time before the exercise of the put option by DB, ArcelorMittal negotiated terms whereby Macquarie would effectively replace DB. Under these arrangements:

    - Macquarie purchased a 7.5% shareholding interest in China Oriental, the same interest as DB originally held, at HK$1.70 per share;

    - Macquarie was granted by ArcelorMittal a put option whereby Macquarie could put its shareholding in China Oriental to ArcelorMittal at HK$1.70, adjusted if required for the payment of any dividend, at the end of the option period being 30th April, 2015 which put option was fully cash collateralised so that, apart from the payment of fees and reimbursement of Macquarie's costs, no cash changed hands; and

    - ArcelorMittal agreed to indemnify Macquarie against all the risks of the arrangements, including any mandatory general offer obligation arising from them.

13. ING agreed to roll over its arrangements with ArcelorMittal on the same basis as those agreed by Macquarie.

14. On 9th June, 2014 the independent non-executive directors of China Oriental challenged these arrangements claiming that they had resulted in a mandatory general offer obligation for ArcelorMittal at a price of some HK$6.50 and requesting a ruling from the Takeovers Executive to this effect. On 21st August, 2014 the Takeovers Executive ruled that a mandatory general offer had not been triggered. In response to this ruling the independent non-executive directors requested on 1st September, 2014 a review of the ruling by the Panel. The Panel hearing was then held on 25th September, 2014 which resulted in the 2014 Panel decision. In its decision, the Panel decided that:

    - no mandatory general offer obligation had been triggered by ArcelorMittal;

    - Macquarie and ArcelorMittal were presumed to be acting in concert under class (9) of the definition of acting in concert;

    - the presumption of acting in concert had not been rebutted; and

    - given the similarity of the arrangements, it would follow that both ING and DB are also parties presumed to be acting, or had acted, in concert with ArcelorMittal.

15. After the initial application to the Takeovers Executive by the independent non-executive directors, China Oriental held its annual general meeting. From the poll results it is evident that both Mr. Han and ArcelorMittal voted in favour of all the resolutions proposed, except the resolution granting the general mandate to directors to

issue shares on which ArcelorMittal voted against. It is also apparent that neither ING nor Macquarie voted at all at the meeting.

16. Towards the end of 2014, when it appeared that the arrangements with ING and Macquarie would terminate and would not be rolled-over, ArcelorMittal approached the Takeovers Executive for guidance on a number of Takeovers Code issues which might have arisen following the termination of the arrangements with ING and Macquarie. During the discussions mention was made of the possibility of a voluntary offer being made for the shares in China Oriental as well as various issues concerning the implementation of a mandatory general offer in the light of regulations in the PRC were such an offer to be required. Temporary alternatives to the arrangements with ING and Macquarie were also discussed. The consultation culminated in an application by ArcelorMittal on 29th January, 2015 for a waiver of the mandatory general offer obligation which would otherwise arise when the put options were exercised by ING and Macquarie. By letters dated 4th and 10th February, 2015, the Takeovers Executive issued its ruling waiving the mandatory general offer obligation of ArcelorMittal.

The relevant provisions of the Takeovers Code

17. The Codes in their introduction stress the importance of previous Panel decisions in the interpretation of the Takeovers Code. In Paragraph 2.3 of the Introduction to the Takeovers Code it states that:

"The Executive and the Panel also interpret [the Takeovers Code] in the light of previous rulings that have been made under [the Takeovers Code] by the Executive and the Panel, or their predecessor, the Committee on Takeovers and Mergers."

18. Rule 26.1 is at the heart of the Takeovers Code and defines the thresholds when control is acquired and when a mandatory general offer is required. This Rule states that:

"Subject to the granting of a waiver by the Executive, when

(a) any person acquires, whether by a series of transactions over a period of time or not, 30% or more of the voting rights of a company;…

… that person shall extend offers, on the basis set out in this Rule 26, to the holders of each class of equity share capital of the company, whether the class carries voting rights or not, and also to the holders of any class of voting non-equity share capital in which such person, or persons acting in concert with him, hold shares (see also Rule 36)."

It is apparent from the introductory words to the Rule that the obligation to extend a mandatory general offer can be waived by the Takeovers Executive. The Notes to Rule 26.1, as can be seen below, set out certain criteria that the Takeovers Executive must apply when considering to grant a waiver from the requirements of this Rule and the circumstances when a mandatory general offer is normally required when there are transfers of shares between members of a concert party group and when waivers can generally be expected. In an answer to a question from the Panel, the Takeovers Executive confirmed its understanding of the opening words of Rule 26.1 that the criteria to be used to assess whether a waiver should be granted requires an analysis of all the relevant facts and circumstances and not simply the criteria set out in Notes 6(a) and 7 to the Notes of Rule 26.1.

19. Note 1 to Rule 26.1 reads as follows:

"The majority of questions which arise relate to persons acting in concert. The definition of "acting in concert" contains a list of persons who are presumed to be acting in concert unless the contrary is established. The following Notes illustrate how this Rule 26 and definition are interpreted by the Executive.

There may also be circumstances where there are changes in the make-up of a group acting in concert that effectively result in a new group being formed or the balance of the group being changed significantly. This may occur, for example, as a result of the sale of all or a substantial part of his shareholding by one member of a concert party group to other existing members or to another person. The Executive will apply the criteria set out below, and in particular in Note 6(a) and Note 7 to this Rule 26.1 and may require a general offer to be made even when no single member holds 30% or more."

This Note makes it clear that changes within a concert party group, even if they do not result in any additional voting rights attaching to shares being acquired by the concert party or a Takeovers Code threshold being triggered can give rise to a mandatory general offer obligation. It also requires the Takeovers Executive to apply the criteria set out in Note 6(a) and Note 7 to the Notes to Rule 26.1.

20. The relevant portion of Note 6(a) to the Notes to Rule 26.1 reads as follows:

"Acquisitions from another member

Whenever the holdings of a group acting in concert total 30% or more of the voting rights of a company and as a result of an acquisition of voting rights from another member of the group a single member comes to hold 30% or more or, if already holding between 30% and 50%, has acquired more than 2% of the voting rights in any 12 month period, an obligation to make an offer will normally arise.

In addition to the factors set out in Note 7 to this Rule 26.1, the factors which the Executive will take into account in considering whether to waive the obligation to make an offer include:–

(i) whether the leader of the group or the largest individual shareholding has changed and whether the balance between the shareholdings in the group has changed significantly;

(ii) the price paid for the shares acquired; and

(iii) the relationship between the persons acting in concert and how long they have been acting in concert."

This Note states that changes in a concert party group which results in a member of that group crossing a takeover threshold will "normally" be required to make a mandatory general offer: that is the starting point. The waiver is a concession and the Note sets out the criteria which will be applied. However, as stated in the Panel decision relating to Hong Kong Aircraft Engineering Company Limited of 10th December, 2008 [at paragraph 27] these criteria are not exhaustive. So the criteria set out does not exclude the considerations of other factors.

21. Although Note 1 to Rule 26.1 also directs the Takeovers Executive to consider the criteria set out in Note 7 to the Notes to Rule 26.1, none of the criteria set out in this Note is relevant to the present matter.

22. Acting in concert and the classes of persons presumed to be concert parties, unless the contrary is established, are defined in the Takeovers Code as follows:

*"**Acting in concert:** Persons acting in concert comprise persons who, pursuant to an agreement or understanding (whether formal or informal), actively cooperate 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:–…

…

(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)."

Concert party activity is directed towards the objective of obtaining or consolidating control. However, it must also relate to how control is held and changes to that. Note 1 to the Notes to Rule 26.1 in particular would make little sense if this were not the case. Transfers between concert party members, even if they do not result in any threshold being crossed or an increase in the concert party's aggregate shareholding, can result in effectively a new concert party grouping.

The presumption clause puts those in each class on notice that they will be considered to be acting in concert with the persons of the same class, unless the contrary is established. ArcelorMittal is not an authorised institution within the meaning of the Banking Ordinance (Cap. 155) and it provided ING and Macquarie financial assistance to purchase their shares in China Oriental. The Panel in its 2014 Panel decision did not accept that the presumption had been rebutted.

23. Once a concert party group has been determined or admitted, it will be considered a concert party until clear evidence is presented to establish the contrary. This is set out in Note 3 to the definition of "acting in concert" which states:

"Break up of concert parties

When a ruling or admission has been made that a group of persons is or has been acting in concert, it will be necessary for clear evidence to be presented before it can be accepted that they are no longer acting in concert."

In the 2014 Panel decision, the Panel ruled that ArcelorMittal, ING and Macquarie were concert parties. No evidence has been adduced that at any time between the 2014 Panel decision and the completion of the exercise of the put option by ING and Macquarie that the concert party had broken up. Accordingly the Takeovers Code requires them to be considered parties acting in concert from the date on which it was determined that they were concert parties until 30th April, 2015 when ING and Macquarie ceased to have any shares in China Oriental.

24. In case of doubt the Takeovers Code also encourages parties to a takeover or merger transaction to consult with the Takeovers Executive. This is set out in Paragraph 6.1 of the Introduction to the Codes which reads as follows:

"When there is any doubt as to whether a proposed course of conduct is in accordance with the General Principles or the Rules, parties or their advisers should always consult the Executive in advance. In this way, the parties can clarify the basis on which they can properly proceed and thus minimise the risk of taking action which might be a breach of the Codes."

25. While the Codes state that consultation will not result in provisional rulings, this does not preclude parties from seeking formal rulings. In this regard, for an authoritative ruling to be made by the Takeovers Executive it requires to be fully informed of all relevant information relating to the ruling. This is set out in Paragraph 7.1 of the Introduction to the Codes, the relevant portion of which states the following:

"A ruling by the Executive normally involves a consideration of all relevant information in relation to the application and a more thorough analysis than that permissible under a consultation. In some cases the Executive may find it necessary to convene an informal meeting or hear the views of other interested parties before making a ruling. The Executive requires prompt co-operation from those to whom enquiries are directed so that decisions may be both properly informed and given as speedily as possible. Rulings may initially be conveyed to parties orally but will always be confirmed in writing in time."

26. Paragraph 8 of the Introduction to the Codes sets out the information required to be submitted for a ruling by the Takeovers Executive which it is not necessary to repeat here. In respect of the ruling made by the Takeovers Executive in this matter, it was conveyed to ArcelorMittal in writing by letters dated 4th and 10th February, 2015.

The cases of China Oriental, Mr. Chan and Mr. Churk in summary

27. Mr. Churk believed that the 2014 Panel decision was fundamentally flawed and that by definition ArcelorMittal, ING and Macquarie should not have been considered parties acting in concert as the presumption did not apply. In this circumstance, it should be disregarded. Further, were the presumption to apply, it could be readily rebutted as no acquisition or consolidation of control as the shareholding of ArcelorMittal and the concert party as a whole remained unchanged. If they were not concert parties, the provisions of Note 6(a) to the Notes to Rule 26.1 could not apply to them so the basis on which the Takeovers Executive had granted the waiver was incorrect.

28. The other parties were less adamant on whether the Takeovers Code permitted the Takeovers Executive the discretion to grant a waiver of the mandatory general offer obligation which arose on the termination of the arrangements between the parties. They argued instead that the waiver should not have been granted on the basis of the criteria set out in Note 6(a). While they did not deny that ArcelorMittal remained the leader of the concert party, it must be apparent that the balance between the shareholdings of the concert party group changed significantly with two members of the group ceasing to be members and ArcelorMittal alone increasing its shareholding from just below 30%, the trigger point for a mandatory general offer, to some 47%. This was a much greater change than in the Panel decision in relation to Wing Hang Bank, Limited [29th August, 2008] where the Panel had ruled that the changes in shareholding had resulted in the formation of a new concert party.

29. China Oriental was particularly critical of the Takeovers Executive's contention that ArcelorMittal retained the "beneficial ownership" of the shares in China Oriental held by the other concert party members. The shares had been purchased by ING and Macquarie, stamp duty had been paid, the ownership of the shares was clearly theirs, they were entitled to receive all dividends by China Oriental during the currency of the options and they were free to vote the shares in any way they wanted. In this connection it was noted that while ArcelorMittal voted against the resolution at the 2014 annual general meeting of China Oriental to renew the directors' mandate to issue shares, neither ING nor Macquarie had voted which was contrary to how a concert party is expected to act.

30. It was irrelevant that ArcelorMittal had already made a mandatory general offer for the shares in China Oriental which had closed in 2008. If a mandatory general offer had been triggered subsequently then that offer should be made. In this regard, emphasis was given to the statement in paragraph 43 of the 2014 Panel decision which stated the Panel's view that "[w]ithout an arrangement of this kind [the sale of shares to, and option arrangement with, Macquarie] ArcelorMittal would have had to purchase DB's shareholding in China Oriental thereby triggering a mandatory offer obligation under Rule 26.1 at a very high price."

31. China Oriental also sought to contrast the way ArcelorMittal had described the arrangements with the banks to the Hong Kong Stock Exchange and in litigation with Mr. Han which emphasised the independence of the banks and the way these arrangements were being described now. Mr. Chan also drew the Panel's attention to regulatory and other disputes involving ArcelorMittal in other parts of the world to undermine ArcelorMittal's contention that it had taken its responsibilities to abide by the Takeovers Code conscientiously and had fully cooperated with the Takeovers Executive.

32. Lastly, Mr. Chan argued that if a waiver were to be granted it should be made conditional upon the approval of the minority shareholders of China Oriental.

The case of ArcelorMittal in summary

33. Unsurprisingly ArcelorMittal agreed with the Takeovers Executive's ruling and its reasons for it. It submitted that the Takeovers Executive had the clear discretion to grant the waiver, the reasons for which are not confined to the criteria set out in Note 6(a), and once that waiver had been granted it should only be overturned in the most exceptional circumstances.

34. It also suggested that the matter should be viewed in the overall context of the history of the events which started in 2007 when ArcelorMittal became a substantial shareholder of China Oriental. The unwinding of the arrangements simply put it back to its position when it had completed its mandatory general offer made which closed in 2008.

The case of the Takeovers Executive in summary

35. The Panel had clearly ruled in its 2014 Panel decision that ArcelorMittal, ING and Macquarie were parties acting in concert. That decision stands and is final. The fact that ING and Macquarie did not vote at China Oriental's 2014 annual general meeting does not alter the position. The starting point, therefore, in considering the matter is that these parties are concert parties.

36. The Takeovers Executive was in no doubt that the unwinding of the arrangements between ArcelorMittal, ING and Macquarie which resulted in ArcelorMittal increasing its shareholding from below 30% of the voting rights attaching to shares in China Oriental

to some 47% triggered a mandatory general offer under Rule 26.1. Given its central importance in the regulation of takeovers and mergers in Hong Kong, this Rule is very strictly regulated.

37. By its wording, Rule 26.1 gives the Takeovers Executive the discretion to waive the mandatory general offer obligation in reliance on specific Notes to Rule 26.1 and more generally in response to all the circumstances relating to the matter. In this matter a crucial consideration was the 2014 Panel decision and the reasons the Panel gave for it.

38. Looking at the provisions of Note 6(a) to the Notes to Rule 26.1, it is apparent that there has been no change in the leadership of the concert group which had always been held by ArcelorMittal. The issue was the significance of the changes in the concert party group, which effectively resulted in its disbandment. While there was evidently a shift in the balance of the registered shareholdings, the Takeovers Executive did not consider there was a significant change in what it referred to as the "beneficial ownership". By "beneficial ownership" it did not mean the narrow legal definition of the term but rather where the economic benefits lay. It believed that for all practical purposes the economic risks of the shareholdings held by ING and Macquarie had from the outset been assumed by ArcelorMittal and in more recent years and in particular when the arrangements were renegotiated in 2014 there was no realistic prospect of ING or Macquarie benefitting from any upside potential from their shareholdings in China Oriental. The Panel in its 2014 Panel decision had characterised the arrangements as essentially a warehousing of shares; no money had changed hands and the shares were destined to be put back to ArcelorMittal.

39. The other criteria set out in Note 6(a), being the price paid and the relationship between the members of the concert party and how long they had been acting in concert were not relevant in this matter.

40. The accounting treatment of the investment in China Oriental in the accounts of ArcelorMittal, which had not "derecognised" the 17.4% shareholding held by ING and Macquarie, and before that DB, confirmed that ArcelorMittal had a significant exposure to the risks and rewards of this investment.

41. The potential payment of dividends by China Oriental which would have been received by ING and Macquarie in respect of the shares in China Oriental registered in their names did not alter its analysis as the amount of any payment would have been set off against the put price payable by ArcelorMittal. As it was, China Oriental had not declared any dividends since its 2011 financial year.

42. The fact that ING and Macquarie did not vote at the 2014 annual general meeting was not a critical issue either. During the period immediately preceding the annual general meeting discussions were taking place between the Takeovers Executive and the parties, who claimed that they were not acting in concert so they were unlikely to take actions which would obviously contradict this assertion. As it was, in the 2014 Panel hearing Macquarie had advanced the idea that it was generally a passive investor and did not generally vote at the meetings of the companies in which it was invested.

43. There was no question that the waiver granted to ArcelorMittal should have been made conditional upon the approval of minority shareholders as the "whitewash waiver" approval was only applicable in relation to the issue of new securities.

44. The consultation process is an essential feature of the success of the Takeovers Code and helps to minimise the possibility of breach. In this matter, ArcelorMittal, together with its legal advisers, conducted themselves appropriately. Furthermore there was

nothing wrong in parties structuring their transactions so that they fall within one or more of the safe harbours provided by the Takeovers Code.

The decision and reasons for it

45. ArcelorMittal had applied to the Takeovers Executive for a waiver of its Rule 26.1 mandatory general offer obligation. In doing so, it appears to have provided the Takeovers Executive with sufficient information for it to have made a properly informed decision to grant the waiver. During the Panel hearing, no material, new or significant factors beyond those already before the Takeovers Executive at the time the waiver was granted was drawn to the attention of the Panel. The ruling from the Takeovers Executive was properly obtained. In normal circumstances, a party to a possible takeover or merger transaction who has received a ruling from the Takeovers Executive should be confident that it can act on it, otherwise this would serve to undermine the consultation process and the efficacy of obtaining rulings from the Takeovers Executive in advance of any action. While it is always open to the Panel to alter or reverse a ruling, it should still be alive to the broader consequences of such a decision and take this into account.

46. In this matter the 2014 Panel decision served as an important precedent. Not only does the Takeovers Code require the Panel to have regard to previous decisions of the Panel but in this case the 2014 Panel decision involved the same company and similar issues. It was certainly not open to the Panel to alter the 2014 Panel decision. In this matter, it had already been decided that ArcelorMittal, ING and Macquarie were parties acting in concert and in considering the application for a waiver the Takeovers Executive was correct in regarding them as members of a concert party group.

47. The termination of the arrangements between ArcelorMittal, ING and Macquarie triggered a mandatory offer obligation under Rule 26.1 in the absence of the Takeovers Executive granting a waiver. The statement in the 2014 Panel decision that the exercise by DB of its put option would trigger a mandatory general offer obligation is correct. It was unnecessary in the context that statement was made to refer to the ability of the Takeovers Executive to waive such an obligation. The wording of the Rule 26.1 makes this abundantly clear.

48. Although the Notes to Rule 26.1 direct the attention of the Takeovers Executive to a number of criteria which it must consider, it should also be apparent from the more general wording of Rule 26.1 itself that in exercising its discretion to waive a mandatory general offer under Rule 26.1 the Takeovers Executive should take into account all relevant factors.

49. In this case, in addition to considering the leadership of the concert party group and assessing the significance of the changes within the concert party group, the Takeovers Executive also considered other material factors, including:

    - the underlying economic interest that ArcelorMittal held in the shares in China Oriental registered in the names of ING and Macquarie and the risks to which it was exposed. These were almost entirely, if not entirely, borne by ArcelorMittal;

    - the 2014 Panel decision and in particular its determination that the shares in China Oriental were essentially being warehoused on a temporary basis on behalf of ArcelorMittal by ING and Macquarie;

- the circumstances which led up to the implementation of these arrangements over some seven years, which of themselves were most unusual; and

- the accounting treatment of the investment in China Oriental in the accounts of ArcelorMittal.

These factors form a reasonable basis on which the Takeovers Executive made its decision to grant a waiver. Accordingly, the Panel sees no reason to amend or reverse the decision of the Takeovers Executive.

50. As the Takeovers Executive's decision to grant a waiver has been upheld by the Panel, there is no reason to make a determination on the other matters before it.

19th October, 2015

Parties:

The Takeovers Executive
Mr. Chan Pak To, a minority shareholder of China Oriental
Mr. Churk Shue Sing, a minority shareholder of China Oriental
China Oriental Group Company Limited, advised by Sullivan & Cromwell
Mittal Steel Holdings AG, advised by Linklaters