NEUTRAL CITATION NUMBER: [2026] CIGC (FSD) 31

) COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 275 OF 2020 (MRHCH)

IN THE MATTER OF THE COMPANIES LAW (2020 REVISION)

AND IN THE MATTER OF 58.COM, INC.

Before:	**Ramsay-Hale CJ**
Appearances:	**Mr Richard Boulton KC and Mr Mac Imrie KC, instructed by Ms Caroline Moran, Mr Malachi Sweetman and Mr Daniel Mills of Maples and Calder for the Company**
	Mr Jonathan Adkin KC and Mr Jasbir Dhillon KC, instructed by Mr Rocco Cecere, Mr Zachary Hoskin and Mr Nicholas Batten of Collas Crill, Ms Katie Logan and Mr Jordie Fienberg of Campbells, and Mr Mark Ffrancon Dowds and Tom Stuart of Carey Olsen for the Dissenters
Heard:	**10-15, 18, 24-28 June, 1-2, 15-19 July, 12-14 August and 3-6 September 2024**
Draft judgment Circulated:	**7 April 2026**

Judgment Delivered: 1 May 2026

Section 238 appraisal of fair value of shares - management-led take private - valuation methodologies - comparative assessment of the reliability of valuation methods - Trina Solar (PC) 2025

JUDGMENT

INTRODUCTION

1. These proceedings arise under section 238 of the **Companies Act (2020 Revision).** The dissenting shareholders (the "Dissenters") seek a determination of the fair value of their shares in 58.com, Inc. (the "Company") following a management-led take-private transaction approved at an extraordinary general meeting ("EGM") on 7 September 2020. The question for resolution by the Court is the intrinsic value of the Company's shares as at the valuation date, on the basis that the merger had not occurred.

BACKGROUND

2. In a now familiar origin story, this multi-billion dollar company was founded by Mr Jinbo "Michael" Yao in his bedroom in 2005. At the time of trial in 2024, the Company operated the largest online-classifieds platform in the People's Republic of China ("PRC"). Its business comprised three principal market segments referred to as "vectors" in these proceedings: housing, jobs and automotive. Its platform revenues derived primarily from online advertising, membership fees, and value-added services. The Company was incorporated in the Cayman Islands and, until its take-private transaction in 2020, was listed on the New York Stock Exchange. It was the largest take-private transaction of a Chinese company which was valued at $8.7 billion at the time of the deal.

3. The Company listed its ADSs[1] on the New York Stock Exchange in 2013 under the ticker 'WUBA'. By 2019 it had established a leading position in each of its core verticals but faced intensifying competition from emerging integrated-platform rivals and rising customer acquisition costs.

4. Mr Yao testified that, by early 2020, the Company faced three principal challenges: the disruption caused by COVID-19, intensified competition from rival platforms, and an outdated model requiring innovation. The Company had adopted a new strategy referred to as the "all-in service" strategy and sought to transition from an information-based model to a service- and transaction-based business. He stated that management considered three strategic responses:

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[1] ADS means American Depositary Share.

(1) seeking substantial new investment;
(2) exploring mergers or acquisitions of competitors; and
(3) pursuing privatisation to permit long-term development unfettered by short-term market pressures. [2]

5. Mr Yao said he asked Mr Chris Hsu of Kaihui, with whom the Company had worked with respect to its acquisition of its subsidiary, Ganji.com, to explore whether leading private-equity firms might support a management-led take-private. He described this engagement as informal and preceding any Board mandate and said that their discussions included strategic financing and mergers and acquisition.

6. Mr Hsu made preliminary approaches to parties who might be interested in considering a transaction, including Warburg Pincus, General Atlantic and Ocean Link Capital. These investors indicated interest and later participated in the buyer consortium that proposed the merger.

7. Following Mr Hsu's preliminary approaches, the Board established a special committee (the "Special Committee") composed of independent directors, to evaluate any formal proposal and to advise the Board. The Special Committee was empowered to assess potential offers, obtain independent professional advice, and negotiate with interested parties on behalf of the Company. It selected Fenwick & West LLP ("Fenwick") as its legal adviser and, having considered Duff & Phelps, retained Houlihan Lokey as its financial adviser to provide a fairness opinion, among other things.

8. The Special Committee comprised Mr Robert Dodds and Ms Lily Dong, both non-executive directors of the Company. Mr Hsu assisted the Special Committee in relation to investor outreach but was not a member.

9. On 15 April 2020, the Company announced that it had entered into an Agreement and Plan of Merger with Quantum Bloom Group Ltd, a vehicle owned by the consortium led by Mr Yao. The merger consideration was US$56 per ADS. [3] The transaction was subsequently approved by shareholders at the EGM.

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[2] Transcript Day 8 pages 6 – 8

[3] Unless otherwise stated, all monetary figures in this judgment are expressed in United States dollars per American Depositary Share

10. Following completion, the dissenting shareholders exercised their rights under section 238 of the **Companies Act (2020 Revision)** to have the fair value of their shares determined by the Court.

11. The Company filed a Petition on the 10 November 2020. The matter came on for hearing on 10 June 2024 and concluded on 6 September 2024. The judgment was reserved. Following the delivery of the decision of the Privy Council in *Maso Capital Investments Ltd v Trina Solar Ltd* [2025] UKPC 48, the Court invited and received further submissions on its effect on 12 January 2026.

THE STATUTORY FRAMEWORK AND APPLICABLE PRINCIPLES

12. Section 238 of the **Companies Act (2020 Revision)** entitles a shareholder who dissents from a merger to be paid the *fair value* of their shares, together with interest if the Court so determines. The Court acts as an expert tribunal charged with determining, on the evidence, the monetary equivalent of the Dissenters' proportionate interest in the company as a going concern on the valuation date. The process is evidential and evaluative rather than adversarial in the ordinary sense. As emphasised by Birt JA in *Trina Solar* (CICA) at [36]:

> *"The court must reach its own decision as to fair value and the constituent elements which go to make up that fair value.* ***It must not simply plump for one expert over another."***

13. As explained in *Shanda Games Ltd v Maso Capital Investments Ltd* [2020] UKPC 2, the term "fair value" refers to the dissenter's share of the value of the company as a going concern, subject to any discount for minority status. It does not mean market price, which may be influenced by information asymmetry or by knowledge of the merger itself. Nor does it mean the merger consideration, which may reflect factors extraneous to the intrinsic value of the business. Rather, as stated by Kawaley J in *Re Nord Anglia Education* (unrep. 17 March 2020) at [4]:

> *"... it means what has been described as the intrinsic value of shares in the Company, valued as a going concern and taking into account all value-relevant information, whether or not available to the market, whilst leaving out of account any factors peculiar to a particular buyer or seller but irrelevant to the value of the business, and any enhancement or reduction in value arising from the merger itself."*

14. No valuation formula is prescribed by the statute. Transaction price, trading price, comparable company analysis and DCF valuation have all been held to be legitimate tools. The weight to be given to any valuation approach depends on its reliability in the circumstances of the particular case.

15. The Cayman Islands courts have frequently drawn on Delaware appraisal jurisprudence as persuasive authority in this area. Decisions such as *DFC Global Corp v Muirfield Value Partners LP*, *Dell Inc v Magnetar Global Event Driven Master Fund Ltd* and *Verition Partners Master Fund Ltd v Aruba Networks Inc* have identified factors relevant to assessing the reliability of transaction price, including the presence of a competitive sale process, the absence of conflicts, and the availability of material information to bidders.

16. The application of these factors in Cayman section 238 proceedings was considered by Segal J in *Maso Capital Investments Ltd v Trina Solar Ltd*, where he examined the valuation approaches advanced by the parties and assessed the reliability of the transaction price, ultimately ascribing it significant weight notwithstanding certain defects in the deal process.

17. On appeal, Birt JA, after summarising the defects Segal J had found, said this at [148]:

> *"On the facts of this case, given (i) the significant deficiencies in the market check process, (ii) that this was a management buy-out with all the potential difficulties and conflicts of interest which this brings, (iii) the material risk that Mr Gao's position had a chilling effect on prospective bidders, (iv) the deficiencies in the Fairness Opinion, (v) the concerns about the independence of the members of the Special Committee and whether they were willing to act adversely to Mr Gao's interests, and (vi) the complete failure of the Company to produce relevant evidence, I do not see that any reliance can safely be placed on the Merger Price. The whole point of the protections and processes which have been developed in the Delaware jurisprudence and adopted in this jurisdiction is to give the court*

comfort that the merger price can be probative of fair value. When, in circumstances of a management buyout, the company has failed to produce any witness or sufficient documentary evidence to explain and justify the deficiencies and concerns identified, I do not see how it can be considered as safe to rely upon the merger price as a reliable indicator of fair value."

18. Birt JA concluded that Segal J's decision to give the merger price substantial weight *"...was not reasonably open to the Judge."*[4]

19. That binary approach to reliability was later corrected by the Privy Council, which restored the Court's discretion to assess reliability by degree rather than by exclusion. The decision clarified several important points of principle which arose from that appeal. [5] Sir Andrew Popplewell who delivered the Opinion of the Board, said this:

> *"15. A number of observations may be made about these authorities and the applicable principles.* ***Transaction price, market price, comparable company valuation and DCF valuation are all valuation measures which may properly be drawn on in seeking to assess fair value. This is not intended to be an exhaustive list. There is no hierarchy between them****. There is no presumption, for example, in favour of the transaction price or a market price. All merger transactions are factually unique and the relevant circumstances will often differ very substantially from case to case. In considering each measure, the court will usually be required to take account of extensive factual and expert evidence and consider many variables. Each methodology must be assessed individually to identify strengths and weaknesses which may affect its reliability as a guide to fair value.* ***Reliability is not in this context a binary concept in which the court must conclude that the measure in question is or is not reliable;*** *rather it is a qualitative concept in which the court may conclude that it is more or less reliable on a sliding scale. Often there will be uncertainties inherent in the methodology itself. For example, when considering the transaction*

[4] At 146

[5] Maso Capital Investments Ltd v Trina Solar Ltd [2025] UKPC 48 handed down 30 September 2025

price, the court will be concerned with the hypothetical possibility of rival bids; and in a DCF valuation, with future projections and the discount rate. Sometimes uncertainties will arise from paucity in the evidence before the court. Save where it is proper to draw adverse inferences or to treat a party as having failed to discharge an evidential burden which it bears, the Court has to form a view of the effect of these uncertainties.

16. ***Moreover the exercise is not one of simply assessing the reliability of each methodology individually, but one of assessing comparative reliability between all of them.*** *The courts in the Cayman Islands and Delaware have sometimes used one methodology as a cross-check against another; sometimes they have adopted a percentage weighting of a kind the Judge adopted in this case. Where the values reached by the different valuation measures are relatively close, the concept of a cross-check between them has some coherence. Where, however, the values are widely divergent, it makes little sense to talk of using one as a cross-check against another. In this case, for example, the DCF Value reached by the Judge was some 2 ½ times larger than the Market Price (and indeed on the Dissenters' expert evidence would have been potentially 10 times greater or more). Neither could realistically be said to support the other. Nevertheless in such circumstances the court may properly ascribe some weight to each by a relative weighting. The court may be faced with two valuation measures, neither of which it would consider to be more reliable than not as a guide to fair value if taken individually. Nevertheless it is entitled to ascribe more than a 50% weighting to one if it considers it less unreliable than the other.* ***Assessing reliability is not only a qualitative exercise in relation to each methodology individually, but the court is concerned with a qualitative assessment of the reliability of the methodologies relative to each other.***

...

18. *...**the lists of factors set out in cases such as Dell, DFC Global and Solera can be a useful guide to considerations which in any individual case may point to a greater or lesser degree of reliability in using the transaction price.*** *They are not, however, to be treated as checklists, all or most of which must be met before any reliance may be placed on a transaction price. There may, for example, have been substantial*

> *failings in relation to any market check process which is designed to flush out rival bidders at a higher price than the proposed transaction price; but the court may in a particular case be satisfied that there were no realistic rival bidders; or that none would have come forward even with the most exemplary market check process. It would be perfectly proper for the court to attach weight to a transaction price in those circumstances, although the fact that the court has been deprived of evidence of the point being tested may increase the level of uncertainty and consequently reduce the weighting to be attributed to such price. All will depend on the facts of the individual case, including the relative reliability of other methodologies contended for."*
>
> (emphasis added)

20. The effect of the Board's decision may be summarised as follows: there is no presumption in favour of the merger price or of any other valuation metric. Reliability is a matter of qualitative assessment, not a binary threshold. A methodology may be accorded some weight even if its limitations render it less rather than more reliable. In particular, the Board rejected the proposition that deficiencies in the deal process necessarily preclude reliance on the transaction price.

21. Secondly, the judge's task is to evaluate the relative reliability of each valuation measure. The question is not whether any single measure is correct in isolation, but which is least unreliable in the circumstances. The use of percentage weightings or cross-checks is permissible as a shorthand expression of that comparative reliability.

22. Thirdly, endorsing the approach taken by Segal J at first instance in *Trina Solar* and Parker J in *In re Qunar,* the Court may blend market-based and income-based methodologies where each contributes probative value, provided that the reasoning is transparent, and the weightings are rationally explained.

OVERVIEW OF VALUATION METHODOLOGIES

23. The determination of fair value under section 238 typically proceeds by reference to three principal valuation indicators: the merger or transaction price, the market trading price of the company's publicly listed securities, and the income-based valuation commonly expressed through a discounted cash flow ("DCF") model. Each method rests on a distinct economic theory of value and offers a different lens through which the evidence may be tested. The relative weight to be accorded to each depends on the degree of reliability

which is demonstrated in the particular circumstances of the case. The inquiry is fact specific.

Merger or Transaction Price

24. The merger price represents the consideration agreed between buyer and seller in the transaction giving rise to the dissenters' rights. In economic terms, a price reached through a process involving informed participants negotiating at arm's length may provide evidence of value, as it reflects the outcome of real-world market behaviour. Where the process includes independent board oversight, appropriate access to information, and meaningful engagement with potential bidders, the transaction price may carry significant evidential weight.

25. However, as established by the authorities, the reliability of the transaction price depends on the circumstances in which it was generated. Features such as management participation, informational asymmetries, or deficiencies in the sale process may affect the weight to be attached to it. Such considerations do not operate as threshold conditions but go to the qualitative assessment of relative reliability of the transaction price.

Adjusted Market Trading Price

26. This valuation method derives value from the price at which a company's securities traded in the period prior to the merger. Its usefulness depends on the extent to which the market for those securities was efficient, in the sense that publicly available information was promptly incorporated into price. Where that condition is satisfied, the trading price may provide evidence of value. The existence of material non-public information, or other informational asymmetries, does not necessarily preclude reliance on market price but may affect the weight to be attached to it.

27. Economists commonly test market efficiency using event studies, which examine whether share prices respond rapidly to new public information. Evidence of prompt price adjustment is consistent with semi-strong form efficiency.

28. The company's expert relies on an adjusted variant of this approach, described as the adjusted market trading price ("AMTP"), which seeks to project the pre-announcement trading price forward to the valuation date by reference to movements in selected market and sector indices to produce a contemporaneous market-based estimate of value.

Discounted Cash Flow Analysis

29. The income-based method derives value from the company's projected future cash flows, discounted to present value using a risk-adjusted cost of capital. Properly applied, a DCF model seeks to estimate the intrinsic value of the business based on its expected capacity to generate cash. However, the methodology is inherently sensitive to assumptions concerning projections, discount rates and terminal value. Relatively modest changes to those inputs can materially affect the resulting valuation.

30. In the present case, both experts employed DCF analysis but reached markedly different results. The DCF model on which the Company relies is based on adjusted management projections and other input assumptions which produced values below the merger consideration. The Dissenters' expert adopted different projections and long-run assumptions which produced substantially higher valuations. Each expert critiqued the other's inputs, leaving the Court to assess which, if either, provides a reliable basis for valuation.

Comparable Company Analysis

31. Comparable company analysis is a market-based valuation approach which seeks to infer value by reference to valuation multiples observed for other publicly traded companies said to be broadly similar in relevant respects, such as business activities, scale, growth prospects, and risk profile. The method involves selecting an appropriate peer group and applying observed market multiples to the subject company's financial metrics to derive an implied valuation range. The reliability of such analysis depends critically on the identification of suitable comparators and on the degree to which meaningful similarities can be established. Where there is no stable or agreed peer set, or where differences in business mix, competitive positioning or growth trajectory are material, the probative value of comparable company analysis may be limited.

THE PARTIES' POSITIONS

32. Relying on the evidence of its expert, the Company contends that the fair value of the shares is $54.18 per ADS. This figure represents the average of the merger price of $56 per ADS (the "Merger Price") and the mid-point of a range of AMTP values calculated by its expert using different input assumptions. That figure, although below the Merger Price, was said to reflect the market's informed assessment of the Company's value, absent the merger.

33. If the Court declines to place weight on the AMTP, then the Company submits, the Court should find that the fair value could not exceed the Merger Price, given that all the Company's expert's valuation outputs - including the DCF analysis - fell below that figure. Accordingly, whether the Court places full weight on the Merger Price or blends it with the results of the Company's valuation models, the fair value of the shares would not exceed the Merger Price.

34. On the Company's case then, the Merger Price operates not as a primary indicator but as a ceiling and should not be exceeded.

35. The Dissenters' position is that the transaction was timed by management to take advantage of the dislocation in markets caused by the COVID-19 pandemic in order to acquire the shares at an undervalue. They submit that no weight should be placed on the Merger Price because the process was not sufficiently robust. They also challenge the AMTP on the basis that the market was not efficient and that material non-public information ("MNPI") was available to insiders. They rely exclusively on their DCF analysis, which they contend provides the only reliable measure of intrinsic value on the facts of this case.

36. The Dissenters propose that the fair value of the shares is approximately $105.56 per ADS.

THE ISSUES

37. Against the positions advanced by the parties and the applicable authorities, the following issues arise for determination:

(a) whether the merger process was sufficiently competitive, independent, and informed to render the Merger Price a reliable indicator of fair value;
(b) what weight, if any, should be given to the trading price of the Company's ADSs, including the AMTP, having regard to the extent to which that price reflected value-relevant information as at the valuation date; and

(c) what weight, if any, should be given to the value estimate derived from the experts' competing DCF analyses.

THE EVIDENCE

38. The hearing took place over six weeks between June and September 2024. The transcript extends to 26 sitting days. The Court heard oral evidence from six factual witnesses and two experts, Professors Daniel Fischel and Bilge Yilmaz, experts in economics and finance.

39. The witnesses who were called included:
    (a) Mr Yao (Michael) Jinbo, founder, Chair, and Chief Executive Officer of the Company;
    (b) Mr Robert (Bob) Dodds, a member of the Special Committee;
    (c) Ms Li (Lily) Dong, a member of the Special Committee;
    (d) Mr Wei Ye, Chief Financial Officer of the Company;
    (e) Mr Daniel O'Donnell, a Managing Director of Houlihan Lokey, financial adviser to the Special Committee; and
    (f) Mr Tianyi (Tony) Jiang of Ocean Link.

40. Mr Chris Hsu of Kaihui, who played a pivotal role in the merger process, was deposed in the United States. The video recording of his deposition was played, and the transcript was exhibited.

41. Each witness's affirmation stood as evidence-in-chief, and each was cross-examined at length. Where possible, the Court's findings of fact are set out in the context of each witness's evidence.

42. Before I move to a consideration of the evidence, I record that the hearing of the petition was conducted with the professionalism and efficiency that have become hallmarks of the Cayman Island's section 238 practice. I am grateful to leading and junior counsel on both sides for the manner in which the evidence was presented and managed, and to the experts for their efforts to assist the Court in a complex and technically demanding field.

43. I am obliged to acknowledge that the preparation of this judgment has been protracted. The complexity of the valuation evidence, the need to reconcile competing expert models, and the volume of factual material have necessarily delayed delivery. The documentary record comprised hundreds of documents, including management projections, board and committee minutes, and expert reports. Written closing submissions ran to 575 pages, following four days of oral closing submissions. There was, as described by the Board in Trina Solar, a veritable *"sea of evidence"*. Regrettably, I had other significant cases and administrative responsibilities that impacted the time I was able to devote to the preparation of this judgment. I apologise for the delay and take this opportunity to express my thanks to the parties and their advisers for their patience.

Jinbo 'Michael' Yao

44. The Court turns first to the evidence of Mr Yao, the founder and Chief Executive Officer of the Company, as his was a central role in the initiation and conduct of the take-private process.

45. I have sought to capture the nub of Mr Yao's evidence as it relates to issues of particular importance to the Court's assessment of the integrity of the transaction process. The first is his explanation of why he considered that the Company should pursue a take-private transaction in early 2020. The second is whether he had communicated or anchored a target price of $56 per ADS. The third is whether he had shut out other buyers from the deal process. Finally, the adequacy of the Company's disclosure process, including the truthfulness of his statements concerning his use of computers, mobile devices, messaging applications and the operation of accounts in his name.

46. On the strategic rationale for the take-private, Mr Yao described a constellation of pressures on the Company in early 2020. He said that the onset of COVID-19 had brought the Company's operations almost to a halt, significantly disrupting delivery of services to their clients and by their clients to customers as face-to-face meetings were no longer possible once COVID-19 restrictions were put in place. Competition in the Company's major verticals had intensified, with some independent brands gaining share. The third aspect was that his view that the Company's underlying product model had become dated, necessitating a shift toward "all-in service," shifting their business model from information-based services to a service- and transaction- based business.

47. As a result, they considered various strategies, whether to seek significant investment in the Company, consider a merger and acquisition of the competition or privatization which would allow the Company to focus on long-term development without having to meet quarterly investor expectations.

48. In cross-examination, it was put to him that the take-private was motivated by an intention to acquire the Company cheaply by exploiting the instability in the market caused by COVID-19. Mr Yao rejected that suggestion, stating that he consistently sought the highest possible price, not least because the Company's employees held meaningful equity interests and he believed they were entitled to a fair valuation as much as the public shareholders were.

49. Challenged that as part of the buyer group he would have wanted to acquire the shares at the lowest price possible, Mr Yao made two points: the first was that he had no interest

in the SPV formed to borrow the additional U500 million needed to close the transaction, it was only a vehicle (*"a channel"*[6]) to get the deal done and the second was that the number of shares he was purchasing using the SPV was a very small percentage of his share interest. He said he had no obligation to the other partners in the SPV to get the lowest possible price and reiterated his obligation to his employees.

50. The second issue concerns whether Mr Yao had set or communicated a preferred price, specifically $56 per ADS. Mr Yao acknowledged that this figure surfaced in March 2020 during Kaihui's early contacts with Warburg Pincus but maintained that he expressed no view on price at that time and did not know whether the $56 per ADS figure had been floated by Mr Hsu or by Warburg Pincus. He said that indicating a willingness to participate at a specific price point in March 2020 risked *"putting a ceiling"* on what any private-equity bidder might ultimately be prepared to offer, which in turn would reduce his economic gains if he chose to be a seller, a point he repeated in cross-examination.

51. When referred in cross-examination to internal Warburg Pincus emails in which Mr Hsu was reported as having communicated that Mr Yao favoured a price of $56 per ADS, Mr Yao said that these were Mr Hsu's words and were not based on any instruction from him. He denied communicating any target or preferred price to Mr Hsu or telling Mr Hsu to tell Warburg Pincus that he was dead serious about a transaction at this time. He said he told Mr Hsu only that he wanted the highest possible price. He did make it clear, however, that he wanted the involvement of firms such as Warburg Pincus, which had the financial capacity for a transaction of that size.

52. He accepted that documents created by Warburg Pincus described $56 per ADS as a contemplated or final price but was quite emphatic that he had never informed Mr Hsu or any member of the buyer group or the Special Committee that the merger price should be $56 per ADS. In his words, the figure emerged only in mid-June 2020 when, at the request of the Special Committee, he sought to break a price deadlock and suggested $56 as an opening number, aware that it might be rejected or countered and that Warburg Pincus had previously declined to pursue a transaction at that level.

53. The third issue raised in cross-examination concerned Mr Yao's position as a controlling shareholder. It was put to him that, by reason of his controlling interest, no take-over of the Company could succeed without his support, and that he was therefore in a position to control access to the transaction and to determine which potential bidders were

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[6] Transcript Day 9, page 8, lines 10-11

engaged. The suggestion was that the process was never intended to be competitive, and that he did not intend to allow other bidders to compete.

54. Mr Adkin KC took Mr Yao to an expression of interest from Dragoneer to illustrate that contention. Mr Yao responded that it was not clear whether Dragoneer was proposing to make an independent bid or seeking to participate in the buyer group, particularly where Dragoneer had indicated it would contact General Atlantic. He, therefore, forwarded Dragoneer's inquiry to the Special Committee. He explained further that Dragoneer was a hedge fund whose participation, in his view, would have been limited in scale. He estimated their participation at no more than $30 million in a transaction valued at nearly $3 billion. The upshot of his evidence is that he did not regard Dragoneer as an independent bidder capable of leading a take-private transaction of the Company's size.

55. The final issue concerns the issue of disclosure. In his disclosure affirmation, Mr Yao stated that he did not own or use a computer during the relevant period and relied principally on mobile communications. In his factual affirmation, he reaffirmed that evidence and explained that photographs or videos depicting him at a desk with a laptop or tablet were staged for PR or promotional purposes. When confronted in cross-examination with photographs taken in 2018 and a video from 2017 showing him using a laptop, he maintained that these images did not reflect his usual working practice, and that the devices in question were props used solely for media or promotional purposes. He described browsing the Company's website for the filming of the video for "*good effect*" and being asked to hold his chin "*like he was thinking in depth.*"[7]

56. In cross-examination, he was pressed at length on the implausibility of a large technology company CEO not using a computer. Mr. Yao explained that his job was not drafting or preparing documents but communicating with the persons in charge of each business of the Company. If he had to review complex documents, which was not often, these would be "projected" for him by staff. He explained that he used mobile devices for simple communications, and that he frequently relied on assistants to type or prepare materials. He noted that the development of smart phones in the PRC exceeds that in any other country in the world, including the USA, and if a survey were done it would find that the CEOs of more than half of the companies the size of the Company did not use a computer. He also observed that the Company was itself one of the biggest beneficiaries of mobile internet development in the PRC.

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7 Transcript Day 9, page 50, lines 6-13.

57. Mr Yao was referred to a number of emails sent in his name and asked whether their length and format were consistent with his claim that he did not use a computer. Particular attention was drawn to the absence of a "Sent from my iPhone" footer. Mr Yao explained that he often drafted initial content on his iPhone, sometimes using the Notes function, which he would then copy into an email, and that the footer was not invariably displayed. He further explained that assistants would sometimes take those initial drafts and prepare more formal communications on a computer. I did not regard this exchange as establishing that Mr Yao used a computer during the relevant period or as materially undermining his evidence as to his working practices.

58. Questioned about the sale of the phone he used during the deal process, Mr Yao said that he changes his phone regularly and sells his old phone. In relation to the phone in question, he said that it was sold using the Company's own platform, with a member of his family acting as the seller. He also said that, when he changes phones, data from his old device is migrated to his new phone including his Signal log in, but acknowledged that subsequent attempts by Alvarez & Marsal to recover Signal data from his new phone were unsuccessful. [8]

59. I approach Mr Yao's evidence bearing in mind his central role in the transaction and his position as a member of the buyer group. His evidence requires careful scrutiny, particularly in relation to the integrity of the process and the completeness of the documentary record.

60. The Dissenters submit that Mr Yao is an unreliable witness whose evidence was marred by inconsistencies and implausibilities and must be disregarded. None of the matters on which the Dissenters relied cause me to doubt his credibility. I do not find it implausible that Mr Yao did not use a laptop or that the video and photos were staged or that he disposed of his phone using 58.com employing a family member to conduct the transaction, as he said. I did not find him defensive in the way the Dissenters describe. Rather, he appeared to me to be anxious to dispel any suggestion that he was being dishonest and seeking to mislead the Court.

61. On the issues identified above, I found Mr Yao to be a generally straightforward witness. His explanations concerning his working practices, including his reliance on mobile devices and assistants, were not inherently implausible, and I accept his evidence that assistants frequently prepared or completed communications on his behalf. His account

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[8] Disclosure Affirmation 25 August 2023 {H/47/14-15}

does not, however, provide a complete record of his personal communications, most notably because Signal messages exchanged during the merger period are no longer recoverable. Mr Yao said, and I accept, that although Signal was used during the merger to communicate with the buyer group and Kaihui, his use of that platform was infrequent and largely passive. The significance, if any, of the absence of Signal messages must be assessed in light of the wider evidential record.

62. In relation to price, Mr Yao consistently denied that he anchored or directed a price of $56 per ADS at the outset of the process. His explanation - that doing so would have risked placing a ceiling on bids - was commercially rational. He also said that he wanted the highest price for the shares because that would benefit the Company's employees.

63. On his evidence alone, I would accept Mr Yao's denial that he set or communicated a target price of $56 per ADS, that he wished to achieve the highest possible price and believed that early price anchoring would have risked capping bids.

64. Those matters do not fall to be assessed in isolation but in light of the surrounding contemporaneous documents and the economic reality that, as a controlling shareholder participating in the buyer group, his incentives were not identical to those of public shareholders. The weight to be attached to his evidence must be considered in that broader context.

Chris Hsu

65. The deposition of Mr Hsu, adviser to the Company, taken as part of the US discovery process, was played for the Court and the transcript entered into evidence. His evidence must be assessed in that context. It was given in response to questioning by the Dissenters, without the opportunity to present a full narrative account, and without the benefit of cross-examination in the ordinary sense. The Court's ability to assess his evidence is therefore necessarily more limited than in the case of witnesses who gave oral evidence at trial.

66. His evidence concerned his role in the initiation, structuring and execution of the take-private transaction. He described himself as an experienced adviser in management-supported take-privates of US-listed Chinese companies.

67. He explained that, in early 2020, he assisted Mr Yao in exploring a potential take-private transaction. He undertook outreach to a range of potential financial sponsors whom he regarded as capable of participating in a take-private transaction of the Company's size. He said that this included significant discussions with Warburg Pincus prior to the

approach to Ocean Link, as well as discussions with a number of other private-equity firms, sovereign wealth funds and industry participants. In his evidence, he identified firms such as Silver Lake, Carlyle, Bearing, PAG and CVC, and sovereign wealth funds including Temasek and GIC, as among those he contacted or with whom discussions occurred. He said that, notwithstanding this outreach, very few potential sponsors responded with actionable interest, a position he attributed to prevailing market conditions during the COVID-19 period.

68. In relation to Warburg Pincus's involvement, Mr Hsu was asked when he first recalled Warburg Pincus indicating an intent to participate as part of the buyer consortium. He said that he had had discussions over a period of days with Warburg Pincus before Ocean Link was approached and that, at the conclusion of those discussions, Warburg Pincus indicated that it did not have an interest in participating in a transaction of any type, citing COVID-related uncertainty and prevailing market circumstances. He said that he renewed the conversation with Warburg Pincus sometime later, after Ocean Link had submitted its non-binding proposal, and sought to persuade it to re-engage.

69. Mr Hsu was taken to a 3 April 2020 WeChat message exchange with Fenwick, in which he stated that, *"Warburg Pincus and General Atlantic are the other two equity investors"*. Asked what he meant, he said that he did not remember the context of the conversation and could not recall precisely why he used that formulation but believed he was responding to a discussion about prospective equity participants in a possible transaction. He said that the message did not alter his recollection that Warburg Pincus and General Atlantic confirmed their interest in joining Ocean Link days, or possibly a few weeks, after Ocean Link had submitted its non-binding proposal, and that this had occurred after 3 April. He explained that both firms had, at different points, expressed interest, although Warburg Pincus's interest had *"died off"* for a period and that he understood the message to be identifying the only two firms that had expressed any meaningful interest at that stage, notwithstanding that many firms had been contacted. He emphasised that a number of statements made in the exchange were forward-looking and that several matters referred to in it did not in fact occur.

70. With respect to the Special Committee, Mr Hsu was examined about the selection legal and financial advisers. He was taken to a number of WeChat and audio messages from April 2020 and questioned about the process by which the Special Committee considered multiple law firms, including Fenwick, Goodwin, and Skadden.

71. He recalled that Dodds and Dong had differing preferences regarding legal counsel, with Lily (and Michael Yao) favouring Fenwick and Bob favouring Goodwin. He described the

process of selecting a legal advisor as involving *"healthy debate"* and said the possibility of adding a third independent director as a tiebreak was discussed. He agreed that the term *"pressure"* was used by various participants, but said it did not necessarily imply improper influence. In a WeChat exchange on 7 May 2020, Mr Hsu reassured the Special Committee about the 13E-3 process, indicating that it would *"protect"* the Company, the Board, and the Special Committee from exposure. He said did not recall the precise context in which he said that, but that the purpose of the 13E-3 process was to provide a framework for assessing fairness rather than to shield participants from liability and that he had not focussed on litigation is his discussions with the Special Committee.

72. Mr Hsu was also questioned about communications in May 2020 concerning the timetable for providing management projections to the buyer group. He said that, by mid-May, he was concerned about the *"velocity and momentum"* of the transaction because, despite what he described as significant outreach to different types of investors, there had been *"little to no interest"*, and he considered that time could be *"less of our friend than it was our enemy"* in circumstances of heightened COVID-related uncertainty and limited alternative interest. He was taken to a WeChat message in which he wrote that, in other cases, projections were sent out *"within 24 hours"* of their going to the Special Committee. He said that the timing varied from transaction to transaction and depended in part on the state of readiness of the projections and the work being done by the financial adviser. He said that a special committee could reasonably consider projections within 24 hours, and he recalled that Ms Dong, in particular, undertook a greater degree of review herself than he typically observed directors to do.

73. He accepted that, in the exchange, Ms Dong appeared to be suggesting a longer process and that he pushed back, describing a natural tension between speed and other considerations. He said he did not know whether his pushback had the intended effect, though he accepted that a later message suggested the timetable had been accelerated by about a day.

74. He was also asked about a message in which he wrote that the projections were *"more of a formality."* He said that he did not recall the precise context in which he used that phrase and explained that he meant that the private-equity funds were continuing their processes without projections in hand.

75. Mr Hsu was asked about his role in negotiating deal terms, including price, with the buyer group. He said that, for a period, he was *"front-facing"* in price negotiations. he did not recall if Dodds or Dong attended any Zoom meetings where he conducted ANY SUCH negotiations with the buyers answered He described encountering resistance from the

buyer group, including Tencent, Ocean Link, General Atlantic, Warburg Pincus, and Michael Yao, separately or in groups, over many days of effort and many rounds of negotiation. He said that after many days of not being able to negotiate any uplift in price, he was able to achieve a 30-cent increase from $55 to $55.30. At that point, the Special Committee members themselves became directly involved in negotiations.

76. Mr Hsu recalled using a deck prepared by Houlihan Lokey to inform his arguments in price negotiations, though not in a "formalistic' way. He remembered members of the buyer citing due diligence findings - slowing growth, COVID uncertainty, capital requirements, declining margins - as pointing to a lower price. He said he would pushback using the Houlihan Lokey material and respond to comments about COVID uncertainty, that uncertainty cuts both ways.

77. The only point at which Mr Hsu was asked about the merger price of $56 was to confirm that his fee was based on the transaction being concluded at that price.

78. I now turn to my assessment of Mr Hsu's evidence. I accept that he played a central and ongoing role in sponsor outreach and in communications between management, potential investors and advisers throughout the early stages of the process. I regard his evidence as generally coherent and, in significant respects, consistent with contemporaneous documents so far as concerns matters of process and chronology.

79. I place weight on Mr Hsu's evidence where it describes sponsor outreach and related matters, including his account of the extent of that outreach, the limited actionable interest it generated, and his concerns about transaction *"velocity and momentum"* given the market conditions created by COVID. That evidence is, in general, consistent with contemporaneous materials indicating that sponsor engagement developed over time. However, his account of Warburg Pincus's involvement, in particular his evidence that its interest evolved only after Ocean Link's proposal, must be considered in light of the contemporaneous communications relied on by the Dissenters which suggest that the composition of the eventual buyer group may have been identified, or treated as settled, at an earlier stage. That issue bears directly on whether the process was, in substance, open and competitive, and I return to it below.

80. I treat with greater care those aspects of his evidence which depend on reconstruction of context or his own characterisation of communications, particularly where they bear on interactions with the Special Committee or the meaning of contemporaneous WeChat messages or audio recordings and are not fully documented. His evidence in these areas is, in places, qualified by an expressed lack of recollection or missing context. These issues must therefore be assessed by reference to the full evidential record.

Robert Dodds Jr

81. Robert Dodds Jr gave evidence concerning the establishment, mandate and operation of the Special Committee formed to consider the proposed take-private transaction. He filed two factual affidavits and was examined and cross-examined over two days of the hearing.

82. Mr Dodds was appointed to the Board as an independent director on 13 April 2020 and, shortly thereafter, he and Ms Lily Dong were appointed as the two members of the Special Committee. Although he had not previously served as a member of a special committee, he said he had substantial professional experience of advising on, and interacting with, special committees in comparable transactions.

83. The Board minutes of 20 April 2020 described the Special Committee's role as being to "review, evaluate and negotiate" the terms of possible take-private transactions (and any alternative transaction), and to consider those options against the Company remaining listed. Mr Dodds' evidence was that he understood this mandate to include a responsibility to assess price and key terms from the perspective of minority shareholders, and that if the Special Committee concluded that the proposed consideration was inadequate, it had both the power and the obligation to reject the transaction.

84. Mr Dodds' evidence was that, following his appointment, he treated the selection of independent advisers as the first and most pressing practical tasks. He regarded the Committee's independence, and its ability to obtain unconflicted legal and financial advice, as central to its capacity to negotiate effectively on price and terms.

85. As to legal advisers, Mr Dodds described a process in which he and Ms Dong considered alternatives and discussed them extensively. He explained that although his initial preference was for Goodwin Procter, the Special Committee ultimately selected Fenwick, based on its perceived experience in take-private transactions, team structure, responsiveness, and his conclusion that Fenwick would act solely for the Special Committee. As to financial advisers, Mr Dodds' evidence was that the Special Committee considered both Houlihan Lokey and Duff & Phelps, and ultimately engaged Houlihan Lokey to provide valuation advice and a fairness opinion.

86. In his affidavit, Mr Dodds also gave detailed evidence concerning the Special Committee's approach to price negotiations. He explained that, notwithstanding Houlihan Lokey's view that the buyer group's initial offer of US$55 per ADS lay within a fair value range, he and Ms Dong considered that the Special Committee could and should seek an increase. He described a deliberate negotiating strategy, including the decision not to disclose Houlihan Lokey's assessment of fairness to the buyer side in order to preserve negotiating leverage.

87. Mr Dodds further described the Special Committee's use of staged negotiating tactics. His evidence was that initial price discussions were conducted indirectly through Mr Hsu, but that when those discussions failed to produce progress, the Special Committee decided to escalate by engaging directly with buyer-side principals. He described direct discussions with representatives of General Atlantic and Warburg Pincus, in which the Special Committee pressed for a higher price and was met with resistance grounded in the buyers' assessment of the Company's outlook and their return requirements.

88. Mr Dodds' evidence was that the Special Committee considered and rejected an incremental proposal to increase the price to $55.30, which it regarded as inadequate. He described resistance from Warburg Pincus in particular to any increase above $55, including expressed willingness to walk away from the transaction if price expectations were not met. His evidence was that the Special Committee nonetheless continued to press for further movement, and ultimately agreed to the transaction only after a further increase was secured.

89. Mr Dodds emphasised that, throughout this period, the Special Committee understood itself to be free to reject the transaction if it concluded that an acceptable price could not be achieved. He did not regard the outcome as pre-ordained, and said that the Special Committee's negotiating posture reflected its assessment of the limited pool of credible financial sponsors, the Company's circumstances, and the risks of losing the transaction altogether.

90. In cross-examination, Mr Dodds was questioned closely about what he understood about the proposed transaction at the time he agreed to join the Board and the Special Committee. He accepted that, before his appointment, he was told by Messrs Jiang, Zhang and Hsu that a number of existing Board members were conflicted in relation to the transaction and that Mr Yao and Tencent were considering participation in a take-private. His contemporaneous notes of 9 April 2020 recorded that *"4–5 board members [were] conflicted"* and that *"Michael"* and *"Tencent" "would like to participate".*[9]

91. It was put to Mr Dodds that he had been invited to join a Special Committee in circumstances where the identity of the principal participants in the transaction was already known, and that the role of the Committee was, in substance, to approve a transaction whose basic shape had already been determined. Mr Dodds did not accept that characterisation. He said that his notes reflected what he had been told, but that he

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[9] Day 4 page 51 and 52

did not regard participation by Mr Yao or Tencent as settled or inevitable, and understood the statements to reflect a "positive spin" on them joining the transaction, rather than a firm commitment by those parties.

92. In relation to Mr Hsu's role, Mr Dodds in his affidavit explained that, at the time he and Ms Dong were appointed, the buyer group had not yet been fully constituted, and it was not then known who would ultimately join Ocean Link. Mr Dodds' evidence records that Mr Hsu updated the Board on his discussions with potential sponsors, including Warburg Pincus and General Atlantic, and that, from Mr Dodds' perspective, matters were still developing until the exclusivity arrangements were agreed.

93. Mr Hsu's relationship with the Special Committee was explored in cross-examination, the overarching suggestion being, that notwithstanding the formal mandate of the Special Committee, the deal process had been shaped, if not directed, by Mr Hsu.

94. In that context, Mr Dodds was taken to evidence concerning Mr Hsu's involvement in adviser selection, the deal process and communications with potential sponsors.

95. Mr Dodds was cross-examined at length about the selection of legal advisers. He accepted that Mr Hsu had a strong preference for Fenwick and communicated that preference to both him and Ms Dong individually, but maintained that the Special Committee made its own decision and did not defer to Mr Hsu's judgment. He acknowledged that he spoke to Mr Yao who seemed to think Fenwick was a good choice, but denied being told to go along with the buyer group's choice of Counsel or being told "not to rock the boat."

96. Mr Dodds was also cross-examined about his private communications with Mr Zhang and Mr Jiang about the choice of legal adviser. He accepted that he discussed the topic with them, but said he did not take notes of those calls and did not consider them material to the Committee's decision. He accepted that he had been *"a little annoyed that people were 'insisting' on Fenwick"*[10] - in quotations marks because he was overstating it - but maintained that he did not concede Fenwick as legal counsel because of it, but rather, because after extensive discussion between himself and Ms Dong, he determined it was not worth having a deadlock and he was comfortable with the decision on Fenwick on the facts.

97. With respect to the deal process, Mr Dodds accepted that Mr Hsu attended meetings with the Special Committee and its advisers and provided views on market practice, timing and

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[10] Day 4 page 172 line 5

process, and that the Special Committee relied on information and explanations provided by him, particularly in the early stages. He did not accept, however, that Mr Hsu directed the Committee or that it deferred to his judgment rather than exercising its own.

98. A substantial part of Mr Dodds' cross-examination was directed to whether, notwithstanding the Special Committee's exclusive mandate to negotiate the transaction, it had in practice channelled or delegated elements of that negotiating function to Mr Hsu. Mr Dhillon relied in particular on the minutes of the Special Committee meeting of 10 June 2020, which recorded that the Special Committee directed Kaihui /Mr Hsu to *"discuss these issues ... with members of the Buyer Group"* and to *"commence negotiating with the members of the Buyer Group ... for an increased share price".*[11]

99. Mr Dhillon put to Mr Dodds that by directing Mr Hsu to conduct negotiations with the buyer group on price and other terms, the Special Committee was undermining its own independence and the rationale for its exclusive mandate, by involving a conflicted individual in a central aspect of the deal process. Mr Dhillon suggested that this defeated the purpose of establishing an independent Special Committee

100. Mr Dodds rejected the suggestion that the Special Committee had delegated its negotiating responsibilities. He said the purpose of involving Mr Hsu was to obtain information and feedback from the buyer group, and to see whether he could extract concessions from the buyer group that the Committee could use in its negotiations. He denied that the Committee delegated its negotiating responsibilities to Mr Hsu, and described him as a "tool" used within a staged negotiating strategy, with the Committee retaining responsibility for negotiations and later engaging directly with the buyer group.

101. Mr Dodds accepted that he and Ms Dong were not present for any discussions between Mr Hsu and members of the buyer group, that they did not require Mr Hsu to produce any written record of what was said and that they relied on Mr Hsu's account of the outcome of those discussions. He accepted that the Special Committee therefore had no direct knowledge of the content of those communications.

102. In a related attack on the Special Committee's independence, Mr Dhillon relied on Mr Dodds' factual evidence in which he said that *"the Special Committee, through Mr Hsu, asked Mr Yao to speak to the Buyer Group about a price increase".*[12] It was put to Mr Dodds that this too involved entrusting price negotiations to conflicted actors without

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[11] Day 5, page 55 line 8-11

[12] Para154

independent oversight. Mr Dodds said that Mr Yao was a buyer who was willing to accept a price increase and talk to the other buyers to convince them to come along and that the plan had always been to ask the chairman to force a price increase with the buyer group. He accepted, however, that communications with Mr Yao on this issue were conducted through Mr Hsu and that the Special Committee did not have direct knowledge as to whether Mr Yao negotiated with the buyer group at all and could not exclude the possibility that Mr Yao had simply alighted on the price that was pre-agreed with the buyer group.

103. A further line of cross-examination concerned whether the Special Committee exercised its mandate independently in deciding how to test the market. Mr Dodds accepted that the Special Committee did not conduct an open auction or go-shop process, and that Houlihan Lokey was not instructed to undertake a broader market check notwithstanding that its engagement contemplated such work.

104. Mr Dodds explained that one of the principal process questions considered by the Special Committee was whether to conduct a pre-signing market check or to insist upon a post-signing go-shop. He said that this issue was discussed with both legal and financial advisers, including Fenwick and Houlihan Lokey.

105. Mr Dodds accepted that the engagement letter entered into with Houlihan Lokey on 27 April 2020 expressly contemplated that, if requested in writing by the Special Committee, Houlihan Lokey would undertake outreach to potential purchasers other than the buyer group, including the provision of confidential non-public information and the coordination of due diligence. He said, however, that the availability of those services in theory did not answer the more difficult question of whether such a process was likely to be productive in practice.

106. The Special Committee's decision not to pursue a market check or go-shop was recorded in the minutes of its meeting on 21 May 2020. Those minutes identify three principal considerations: (i) Mr Yao's agreement to work exclusively with the buyer group; (ii) his 42% voting power; and (iii) the Special Committee's conclusion that outreach to third parties was very unlikely to result in a competing proposal on superior terms.

107. In cross-examination, Mr Dodds rejected the suggestion that the exclusivity agreement foreclosed the possibility of third-party engagement. He emphasised that the exclusivity was Mr Yao's as a buyer, not the Special Committee's, and said that, in his experience, exclusivity arrangements did not necessarily prevent a committee from exploring alternatives where there was a realistic prospect of success.

108. Mr Dodds accepted that Mr Yao's 42% voting power was a significant structural constraint. He agreed that any third-party proposal would require Mr Yao's support to succeed, and that this materially reduced the likelihood that a market check would produce a viable topping bid. He said that this consideration had been apparent from an early stage and was one of the factors that informed the Special Committee's assessment of the risks and potential rewards of conducting outreach.

109. Mr Dodds did not accept that the Special Committee had closed its mind to the possibility of a superior proposal. He said that, even after the decision recorded on 21 May 2020, the Special Committee remained open to competing approaches and continued to regard the possibility of third-party interest as a source of negotiating leverage, albeit one with a low probability of success.

110. In relation to expressions of interest from investors such as Dragoneer, Mr Dodds accepted that neither he nor the Special Committee engaged directly with the fund, sought further information as to the nature of its interest, or explored whether they might be willing to participate on terms that could introduce competitive tension into the process.

111. Mr Dodds' explanation was that he did not regard Dragoneer as having the financial capacity to lead such a transaction given *" the size of the fund and the size of the transaction."*[13] He understood they were interested in an investment in the Company, not an acquisition of the Company, noting that Dragoneer's total capital is about the same size of the Company. He described them as being *"a portfolio investor"* that buys small stakes in companies:

> *"They don't acquire $8.7 billion companies and hold, and they do not lead buyer consortiums. There are certain funds that lead it and can put forward an offer. There are other funds that are followers. They were only a follower, and when I read that letter, I knew very clearly that they were not a competitor, and the whole risk of going out there and trying to solicit an offer -- because, for one, everyone knew about this. It's the largest deal. Any buyer knew about it. They didn't give us an offer. The only way we could do it was to go out and try and convince them to give us an offer. They might have done, so very small chance, but even if they had, it would have been very - quite shaky, and we thought that we wouldn't succeed and then we would be in a situation with the buyer that they would know that we*

[13] Day 5 page 34 line20

went out, didn't succeed and they might very likely cut the offer ...or it would go down." [14]

112. The Court sought clarification from Mr Dodds as to the risks he perceived in approaching Dragoneer or other potential bidders, including the extent to which he believed such outreach might destabilize the buyer consortium or jeopardize the offer, given that sophisticated PE firms expect that a Special Committee might test their price. Mr Dodds' answers were initially framed in generalised terms of possible delay, destabilisation of the buyer group and speculative concerns about non-binding offers. He eventually stated that given the uncertainties during COVID and the fairness opinion already obtained, the Special Committee was concerned that attempting a broader market check might jeopardise the existing offer or lead to a reduced price:

"And this was in the middle of COVID, and we got an opinion that this was a fair offer and we were taking a very large risk if we were to say, "We got a fair offer but let's just spend a few months getting something else," and then nothing else comes or something comes and it's unreliable and the whole thing falls apart. That's the risk that we were worried about." [15]

113. It was put to Mr Dodds that the failure to engage with Dragoneer showed that there was no genuine attempt to test the market or introduce competitive tension, and that the Special Committee had, in practice, accepted a process in which only the existing buyer group could determine price. Mr Dodds did not accept that characterisation, maintaining that the Special Committee exercised its judgment in assessing which parties could realistically influence the outcome of a transaction of this size.

114. Mr Dodds said that, in evaluating the transaction, the Special Committee relied on financial projections prepared and presented by management. He accepted that the Special Committee did not commission independent projections or undertake separate verification of management's assumptions, and that Houlihan Lokey's analyses and fairness opinion were based on those management projections.

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[14] Day 5 page 42 line13 to page 43 line 6

[15] .Ibid.page 43 line 6-13

Li 'Lily' Dong

115. Lily Dong was an independent director of the Company and, together with Mr Dodds, a member of the Special Committee. She gave evidence over two days of the hearing and was both examined and cross-examined at length.

116. Ms Dong's evidence was that she had substantial prior experience relevant to take-private transactions. She said that she had spent approximately 13 years at Hewlett-Packard, much of that time in senior finance and accounting roles, before becoming chief financial officer of a number of Chinese technology companies. In particular, she described her experience at RDA Microelectronics, where she had served as CFO through an IPO, a period as a public company, and subsequently a take-private transaction followed by an acquisition. Following that transaction, she said that she had served as an independent director of a number of listed companies in Hong Kong, New York, and mainland China.

117. She relied on this experience to explain her understanding of the role and responsibilities of a special committee in a management-supported transaction. As she understood it, the role required independence from management and from the buyer group, and that the Special Committee's function was to evaluate the proposed transaction in the interests of unaffiliated shareholders. She accepted that she owed fiduciary duties in that capacity and that the Special Committee was required to exercise its own judgment.

118. The selection of advisers was one of the Special Committee's early tasks. With respect to the legal advisers, she described a process in which she and Mr Dodds interviewed both Goodwin Procter and Fenwick. She said that she favoured Fenwick, based on her perception of its experience in take-private transactions and the quality of its responses in interview, whereas Mr Dodds initially favoured Goodwin Procter, which he regarded as more convenient from a time-zone perspective but that they eventually aligned and selected Fenwick.

119. In cross-examination, Ms Dong was questioned closely about private communications she had with Mr Hsu during the period when the Special Committee was considering the appointment of advisers. She accepted that, during her disagreement with Mr Dodds over the choice between Goodwin Procter and Fenwick, she communicated privately with Mr Hsu about that disagreement and sought his views and suggestions as to how she might persuade Mr Dodds to change his position.

120. She was taken to contemporaneous WeChat and audio messages exchanged with Mr Hsu during the discussions within the Special Committee over the choice of legal adviser. She accepted that Mr Hsu had expressed concern to her that Mr Dodds *"didn't respect Michael*

enough," which she understood was Mr Hsu's view that Mr Dodds was not acting in accordance with Mr Yao's wishes in relation to legal counsel.

121. She insisted that her decision to select Fenwick was based on her own experience and judgment, and not on pressure or influence from Mr Hsu or Mr Yao, giving a detailed explanation:

> *"No, actually I'm seeking his suggestion, because in this legal adviser selection, I have different opinion with Mr Dodds - with Bob. He prefers Goodwin and I prefer Fenwick. Why I feel so strongly I need to try all my best to - for Bob to be aligned with me, it's mainly because in my last taking private transactions, because in RDA -because it was a very challenging deal, it took us one and a half years to complete the deal and we almost failed. If without good legal counsel, so my experience in the past give me the impression that -or -how should I say? My past experience led me to believe that a strong and experienced legal counsel is very essential for special committee to be able to perform our duties effectively.*
>
> *...So that is why I feel strongly, so strongly, that I need to persuade Bob to select a strong legal adviser for us for special committee.*
>
> *...You know, at Bob's age -- and he is very mature, he is very strong, but it's very difficult for me to really convince him. He constantly -- he mentioned to me the timing convenience, the timing zone convenience for him, and Fenwick is in California, it's not convenient for him.*
>
> *So that is why I talked to Chris, I talked to many people, and I tried to try all my means for Bob to change the idea, so I completely disagree that anyone try to use me, including Michael, to try to get Fenwick. It's me who believes, from my past experience of taking private transaction, that Fenwick is apparently a much better choice than Goodwin."*

122. With respect to financial advisers, Ms Dong's affidavit evidence was that the Special Committee considered Houlihan Lokey and Duff & Phelps, ultimately selecting Houlihan Lokey to act as its financial adviser and to provide a fairness opinion.

123. She was cross-examined at length about her communications with Mr Hsu with respect to the Special Committee's selection of financial adviser. The questioning focused on a series of WeChat messages exchanged on 22 April 2020, shortly after she and Mr Dodds had met

with Houlihan Lokey and were considering whether to appoint Houlihan Lokey or Duff & Phelps.

124. Ms Dong accepted that, on 22 April 2020, she sent messages to Mr Hsu describing discussions she and Mr Dodds had had following their call with Houlihan Lokey, including a comparison of the two candidate firms.

125. Mr Dhillon took Ms Dong to messages in which she told Mr Hsu that Mr Dodds had asked whether she had heard from Mr Hsu as to any preference between Houlihan Lokey and Duff & Phelps, and that Mr Hsu had declined to express a preference. In those messages, Ms Dong stated her view that Mr Hsu cared more about the choice of legal counsel than about the choice of financial adviser, and that she did not think Mr Hsu wanted to *"give [the Special Committee] any pressure"* in relation to the financial adviser. Ms Dong accepted that this was what she was conveying.

126. She also told Mr Hsu that she had conveyed to Mr Dodds, that Mr Hsu trusted the Special Committee to make the decision with respect to the Financial Adviser and that the Special Committee had freedom and full authority to make the decision without pressure and that Mr Dodds laughed and accepted that. She then chuckled and said that she thought the noise from the choice of the legal counsel still "*...had an impact on him*" and that "*he is a little bit hesitated to make any decision*" and that he might have to consider "*other people's thoughts*" before a decision was made.

127. She laughed when recounting this to Mr Hsu and it was put to her that this suggested scepticism on her part about the proposition that the Special Committee in fact had full freedom and authority to decide the issue. Ms Dong rejected that suggestion. She said that her laughter reflected relief that she and Mr Dodds were aligned following disagreement over the choice of legal counsel, and that there was no lasting resentment between them. She maintained that, notwithstanding the seeking of advice, she and Mr Dodds made their own independent decisions.

128. She was asked whose thoughts she was referencing when she said, "*other people's thoughts*" and responded that she meant that he would have to listen to her thoughts. Pressed further, she gave a more expanded answer, saying that it was a reference to what other people involved in the transaction might think, including Mr Hsu and Mr Yao.

129. Ms Dong was also questioned about other statements made to Mr Hsu in relation to the choice of financial adviser, that she felt the Special Committee had freedom because she had not *"heard any noise so far."* She explained that by *"noise"* she meant pressure or influence being applied to the Special Committee. She accepted that such pressure could

come from Mr Hsu or members of the buyer group, including Mr Yao, Mr Zhang, and Mr Jiang.

130. Ms Dong accepted that, in that message, she asked Mr Hsu to *"please correct her"* if her understanding about the absence of pressure was wrong. It was put to her that this demonstrated that she did not regard the Special Committee as fully free to decide the issue and that she was looking to Mr Hsu for guidance or direction. Ms Dong rejected that suggestion. Her evidence was that, while she and Mr Dodds were alert to the possibility of pressure and wished to understand whether any might arise, decisions were made by the Special Committee itself, and she did not consider herself obliged to comply with any guidance or pressure from Mr Hsu or the buyer group.

131. Mr Dodds had taken exception to Ms Dong speaking with Mr Hsu and she had undertaken to cease communication with Mr Hsu on sensitive matters. In an audio message she had sent to Mr Hsu on 18 April, she recounted Mr Dodds telling her that, when speaking to Mr Zhang and Mr Jiang, he had been careful not to disclose her position when asked, and she accepted that she understood this as an attempt by Mr Dodds to preserve the confidentiality of internal Special Committee discussions. In the same audio message, she recorded that Mr Dodds *"does not like"* her sharing what she and Mr Dodds had discussed with Mr Hsu.

132. Ms Dong accepted that Mr Dodds had expressly communicated unhappiness about her sharing sensitive information with Mr Hsu without his permission, and accepted that, as a result, she understood it was wrong to do so.

133. It was put to her that she had done exactly that when discussing the financial advisers with Mr Hsu days after giving Dodds that assurance.

134. Ms Dong did not accept that characterisation. She said she had a different understanding of what amounts to sensitive information and that she did not regard sharing views about the financial adviser as improper with Mr Hsu as being within that definition. She said further that Mr Dodds was aware that she shared such information with Mr Hsu and was *"fine"* with it and had even asked her if she had heard from Chris whether they were in favour of any particular firm. She said she discussed the question of financial advisors with Mr Hsu because she wanted to understand the pressure they might potentially encounter so she and Mr. Dodds could effectively deal with it.

135. These exchanges were relied upon to suggest that , notwithstanding her evidence as to independence, Ms Dong was engaging with Mr Hsu in a manner that involved both sharing

internal Special Committee discussions and seeking his input on matters which the Special Committee was considering.

136. A substantial part of Ms Dong's cross-examination was directed to the absence of any pre-signing market check or post-signing go-shop. She accepted that Duff & Phelps had proposed, in its draft engagement terms, services that included a market check and a go-shop, and that she had been advised by Mr Hsu that such steps would, in his view, be futile because any alternative transaction would require Mr Yao's support, given his controlling voting power.

137. Ms Dong accepted that contemporaneous WeChat messages exchanged between her and Mr Hsu in late April 2020 recorded her view that the likelihood of an intensive market check yielding a meaningful outcome was *"nearly to none"*, and that those views were expressed at a time before Mr Yao had entered into an exclusivity agreement with the buyer group. It was put to her that those messages evidenced a decision by the Special Committee not to conduct a market check, and that such decision had been reached before exclusivity was agreed.

138. Ms Dong rejected that characterisation. Her evidence was that the WeChats reflected discussions and the exchange of views, not a concluded decision of the Special Committee. She maintained that, at that stage, there had been no formal decision by the Special Committee not to conduct a market check, and that the exchanges relied upon by the Dissenters did not record any resolution or determination by the Special Committee, but rather her assessment, informed by discussions with Mr Hsu, that further outreach was very unlikely to be productive.

139. Ms Dong further rejected the suggestion that the Special Committee's approach was based on reliance upon any "market check" undertaken by Mr Hsu. She acknowledged that her view that a market check was unlikely to be productive was informed by informal discussions in which Mr Hsu described outreach he said he had undertaken to a number of large private-equity firms and sovereign funds, none of which (on her account) had expressed strong interest in leading a transaction. She accepted that this alleged outreach was not recorded in any Special Committee minutes.

140. She said that the Special Committee's own assessment was that any further market check was unlikely to lead to a different result, given Mr Yao's voting position and lack of interest in an alternative transaction.

Daniel O'Donnell

141. Daniel O'Donnell is a Managing Director at Houlihan Lokey, an investment bank providing transaction-related financial advice including valuation work and fairness opinions. He said he worked in Houlihan Lokey's board and special committee advisory practice and regularly advised boards and special committees in merger and acquisition contexts.

142. He said he had been with Houlihan Lokey since 2007. The first three years he worked in Los Angeles, the next five in Hong Kong and for the last eight or nine he was in Dallas. He has significant experience in fairness opinion work, having advised more than 100 companies and issued more than 100 fairness opinions, including for Chinese companies listed on US exchanges. Of those 100 plus fairness opinion assignments, roughly a third of those involve special committees and transactions similar to the Company's take-private transaction.

143. Mr O'Donnell explained that, in preparing a fairness opinion, Houlihan Lokey undertakes valuation analyses using generally accepted techniques but noted that a significant part of the analysis depends on financial projections provided by management.

144. They would discuss the projections with a subject company's management, including its finance team, in order to develop an understanding of the key assumptions in the projections and to provide Houlihan Lokey with comfort that it is reasonable to use management's projections for Houlihan Lokey's purposes.

145. In this process, Houlihan Lokey would consider various factors to evaluate whether the projections are skewed in any manner and that they align with the historical performance of the subject company. This process includes conducting diligence on the details of the projections and evaluating whether they align with the company's business strategies going forward, examining (i) why the company made certain assumptions in the projections and how those assumptions correlate to stated forward-looking strategies; and (ii) how those assumptions relate to available market data. During this exercise, Houlihan Lokey compared the projections with those published by research analysts and analyse share price, equity market value, enterprise value and enterprise value to adjusted EBITDA, among other factors, in comparison with industry peers. In addition, Houlihan Lokey considered whether there were material matters not fully reflected in the management projections, including aspects of the Company's capital structure and transaction financing, insofar as relevant to its assessment of fairness and its advisory role to the Special Committee.

146. He added the caveat that,

> *"While we review and consider company management's explanations regarding their projections and underlying assumptions, the projections are ultimately management's opinion. We are not involved in the preparation of financial projections so as to avoid any perceived or actual conflict of interest. Therefore, management prepares the projections and makes a representation that the projections are their best estimates of the company's future performance. We then diligence those projections and assess the reasonableness of them in the manner described above."*

147. The fairness opinion is reviewed by the Fairness Review Committee consisting of three senior Houlihan Lokey employees who are not on the deal team. This is done so that these senior Houlihan Lokey professionals can challenge and test the assumptions and conclusions drawn in the analysis, provide review and oversight in the event any errors are made, and provide additional guidance and input as requested by the deal team.

148. Mr O'Donnell said that Houlihan Lokey relied principally on two valuation methodologies:

(i) a selected companies analysis, which is a market approach using trading multiples of comparable publicly listed companies; and

(ii) a discounted cash flow analysis, which is forward-looking and based on projected future cash flows.

149. The selected companies analysis was based on market-derived multiples, using the trading prices of comparable publicly listed companies. He said that those prices reflect contemporaneous market assessments of matters such as risk, liquidity, macroeconomic conditions and investor sentiment, and that for large, well-traded companies such as the Company, they can provide a useful indicator of value at the relevant time. In carrying out their analysis, Houlihan Lokey calculated enterprise value to EBITDA multiples for a group of comparable companies by reference to their closing share prices as at 12 June 2020 and applied an appropriate range of those multiples to the Company's projected EBITDA to derive an implied valuation range.

150. By contrast, Houlihan Lokey's discounted cash flow analysis was inherently forward-looking and based on management projections and assumptions about future performance. In Mr O'Donnell's experience, such projections often produce valuation ranges that are higher than those implied by market-based multiples, and a divergence of that kind does not, of itself, call into question the fairness of a transaction price. He said that this was particularly unsurprising in the market conditions prevailing in the first half of 2020, when equity markets had experienced sharp COVID-related volatility and

uncertainty, while management projections reflected expectations of longer-term recovery rather than contemporaneous trading prices.

151. Houlihan Lokey's fairness presentation to the Special Committee 15 June 2020, included the *"football field"* summary of valuation ranges derived from those analyses. Their implied per-ADS equity value reference ranges included:

(i) selected companies (CY2020): $51.79 - $65.65 per ADS;
(ii) selected companies (CY2021): $49.94 - $67.87 per ADS;
(iii) selected companies (CY2022): $48.16 - $68.04 per ADS; and
(iv) DCF: $53.61 - $71.05 per ADS.

152. In his *viva voce* evidence, Mr O'Donnell said he had reviewed the expert reports of Professor Yilmaz and Professor Fischel, focusing on the parts addressed to Houlihan Lokey. He said the experts' valuations were prepared later, using information provided to the experts by both the Company and the buyer group which Houlihan Lokey did not have when it issued its fairness opinion, and that the experts produced point estimates whereas Houlihan Lokey's work produced valuation ranges in the context of fairness.

153. In response to Professor Yilmaz's criticisms, Mr O'Donnell said that Houlihan Lokey had identified a calculation error in its discounted cash flow analysis after the fairness opinion was issued. He said the error arose from the omission of one year of cash flow in the DCF model and that Houlihan Lokey reported it to its counsel and re-ran the calculation to correct it.

154. Cross-examined by Mr Adkin he said the correction resulted in a change of about 2-3% in the DCF value outcome but maintained that it did not affect Houlihan Lokey's fairness conclusion. He was also questioned by Mr Adkin about the treatment of taxes in the DCF model. He responded that Houlihan Lokey focused on estimated cash taxes paid rather than accounting entries such as taxes payable shown on the balance sheet and sought to estimate the actual tax paid rather than the accounting changes that would have showed up as taxes payable.

155. He accepted that they had not recalculated what the revised DCF range would be if Professor Yilmaz's approach to the treatment of taxes was right and Houlihan Lokey's approach was wrong, for the reason that they were not able to fully replicate Professor Yilmaz's calculation.

156. Mr O'Donnell confirmed that, in the weeks leading up to trial, he had spoken with Houlihan Lokey's counsel and with representatives of Maples, but that he had not

watched the evidence given earlier in the trial and had not been provided with transcripts of it.

157. He accepted that Houlihan Lokey was engaged to provide an opinion as to whether the consideration offered to the unaffiliated shareholders was fair from a financial point of view, and that this was distinct from determining a single "fair price."

158. He was taken to provisions of the engagement letter recording that Houlihan Lokey was entitled to assume that management forecasts and projections were reasonably prepared in good faith, and that Houlihan Lokey would rely on information provided without independent verification and was not responsible for its accuracy or completeness. He agreed that Houlihan Lokey was not to be understood as assuming the role of an auditor.

159. He also confirmed that Houlihan Lokey's fee was not contingent on the conclusion of the opinion and, save for a small closing fee, was not contingent on the consummation of the transaction. He said it would be as *"highly unusual"* for a fairness opinion fee to be contingent on the outcome.

160. Mr O'Donnell was questioned about the flow of information during the term of Houlihan Lokey's engagement and the timing of management projections. He accepted that Houlihan Lokey's early communications about projections and diligence were principally through representatives of Kilometre Capital (also referred to as KL[16]) including Mr Hsu and his colleague Ms Yvonne Yan.

161. Mr O'Donnell gave evidence about the role of KL and other advisers in the transaction. He described KL as acting as a conduit for information flow between management, advisers, and the buyer group, and said that KL representatives (Mr Hsu and Ms Yan) attended Special Committee meetings for parts of discussions relating to process, timing, and access to information, but were asked to leave when the Special Committee wished to discuss sensitive matters.

162. He also gave evidence about diligence calls with management and the chairman. He said that their discussions with Mr Yao focused on strategy and rationale for the transaction rather than the detailed preparation of financial projections, having *"recused himself from management's diligence process."* [17]

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[16] KL was an entity associated with Mr Hsu.

[17] Transcript Day 7 page 108 line 25-109 line 1

163. Mr O'Donnell was taken to contemporaneous emails in May 2020 indicating that the data room was populated on a rolling basis due to time constraints, and to internal Houlihan Lokey emails reflecting concern about not yet having projections and about being *"held out from DD"* (due diligence) whilst being asked whether Houlihan Lokey could meet the transaction timetable. Mr O'Donnell said he recalled that, in mid-May, Houlihan Lokey was still waiting for key pieces of diligence materials, but this was *"commensurate with probably 99% of the deals"* they work on and that a sense of urgency in obtaining information was common in transactions of this nature, particularly in what was, for the US, the early days of the COVID-19 pandemic.

164. He accepted that Houlihan Lokey had received the draft projections around 23 -24 May 2020 and that they provided updated projections to the Special Committee on 26 May 2020 which were final, though subject to *"tweaks on the margin."* He said Houlihan Lokey's initial review took place over a period of about three or four days and included calls with management, including Mr Yao and Mr Ye, and a Special Committee meeting on 26 May 2020 at which Mr Ye discussed the key assumptions and drivers of the projections.

165. Mr Adkin took Mr O'Donnell to his affidavit evidence that the draft projections initially appeared conservative because they reflected a new business strategy, the full specifics of which had not been publicly disclosed. Mr O'Donnell accepted that he did not know what projections or internal plans might have existed before the projections were provided to Houlihan Lokey but said that the Company had made public indications of a shift in business model at a high level. The shift in the business model was to a transaction-based business model which were reflected in the projections Houlihan Lokey received. After discussions with management, Houlihan Lokey became comfortable that the projections, which did not correspond to those of the equity analysts covering the Company, were reasonable. As I understand the evidence, the shift would compress margins and profitability in the short-term and the management projections reflected these anticipated costs and risk which were not visible to the market or analysts at the time.

166. Mr O'Donnell was also asked about the Special Committee's discussions in early June 2020 regarding negotiations with the buyer group. He was shown handwritten notes taken by Mr Dodds of a meeting with the Houlihan Lokey team which included the phrase *"not here to bust deals."* Mr O'Donnell said that he did not recall that statement being made. He was also taken to a WeChat exchange between Houlihan Lokey personnel following an internal fairness review committee meeting, in which it was stated (in translation) that the price of $55 was *"on the low side"* and that a higher price would be preferable, with a *"bottom line"* of $59-60, if there were pressure from the buyer group.

167. Mr O'Donnell explained that this exchange reflected a summary of discussions with Houlihan Lokey's internal fairness review committee and was directed not to the question of whether the price fell within a fair valuation range, but to the identification of negotiating points that could be deployed by the Special Committee in discussions with the buyer group:

> *"one of the two primary goals of that meeting, one is for our fairness review committee to give the deal team, me and my colleagues, permission to issue an opinion at a certain price level. That's one aspect of it. The other aspect is for the review committee - our fairness review committee to help us, as advisers to the special committee - and when I say help us as advisers, I mean give us negotiating points and talking points we can give to our client, the special committee, to help them in the negotiation process. So, you know, as I look at this , the context of this , after our fairness review committee meeting, we spent a lot of time with that committee, the fairness review committee, talking about how to help our special committee client extract a better price and so a lot of this context fed into that negotiating package documents that we referred to a few minutes ago. So these are negotiating points that our fairness review committee help us brainstorm to deliver to our client. So it's a separate issue from a fairness issue versus a negotiating standpoint issue."* [18]

168. He said that, to his recollection, the internal fairness review committee was comfortable that the transaction price was fair from a financial point of view but were focused there on whether the deal team had provided the Special Committee with sufficient analysis and support to enable it to negotiate robustly for a higher price. He explained that it was common for Houlihan Lokey, as part of its advisory role, to prepare materials setting out arguments in favour of a price increase, and that the matters referred to in the WeChat exchange aligned closely with the contents of the *"Price Increase Considerations"* document later provided to the Special Committee. [19]

169. He was pressed by Mr Adkin to agree that the import of the exchanges between Houlihan Lokey's deal team was that the price of $55 per ADS was on the low side and that when Houlihan Lokey recalculated the DCF to correct for the mathematical error, that the deal

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[18] Day 7 pp 85and 87

[19] Day 7 page 53

price of $56 was pretty near the bottom of the DCF range. Mr O'Donnell agreed but maintained, however, that Houlihan Lokey still considered the price to be fair.

170. He was asked if a fairness opinion can be satisfied even where the offer price is below the bottom of one valuation range. Mr O'Donnell did not accept that such circumstances necessarily precluded a fairness opinion as it was a prerequisite for the price to be within range of every valuation methodology. The evidence proceeded as follows:

> Q. *.....you are saying that provided the price is within the range, you are going to conclude that it's fair?*
>
> A. *I mean, in a vacuum, if it's just that one point that's helpful, I would say that even ... - if that bar moved further to the right, after that error in the vertical dotted line was not in it, maybe to the left of it, it's still possible we would say it's fair. We have had instances where the DCF value comes out higher than the other three approaches, so the blind vertical line does not have to be in the DCF bar or in any bar. In fact it's not uncommon for the DCF to be higher than the offer price relative to the other valuation ranges. So it's not a prerequisite to have the line go through the bar.*
>
> Q. *But you would be - can I put it like this: you would be concerned if the offer price was below even the bottom of the range of one of your chosen valuation methodologies; yes?*
>
> A. *No.*
>
> Q. *You wouldn't be concerned?*
>
> A. *No.*
>
> Q. *You wouldn't be concerned if it was below the bottom of the range of all of your chosen valuations?*
>
> A. *All of them now?*
>
> Q. *Yes.*
>
> A. *In your first question you were asking one, right?*
>
> Q. *Yes.*
>
> A. *For your first question –*
>
> Q. *You've only got two methodologies, haven't you, DCF and comparable company analysis; yes?*
>
> A. *Right, yes.*
>
> Q. *So you're saying, are you - I just want to get your evidence straight - that you have chosen two methods?*
>
> A. *Yes.*

> Q. *If the offer price is below the bottom of the range on one of your only two chosen methods, you are still going to give a fairness opinion?*
>
> A. *In a vacuum, it's hard to say but, in the context of this, if it* [the DCF] *had been higher, maybe. "*[20]

171. In re-examination by Mr Imrie KC, Mr. O'Donnell explained that Houlihan Lokey tried to help the Special Committee assess the appropriateness of a market check. He explained that there were certainly positives to a market check, including the possibility of bringing in other interested parties who might submit a competing bid or help raise the price. He said that, in practice, the purpose of such a process was to try to increase the price and achieve a better outcome for shareholders.

172. He went on to explain, however, that the position was highly transaction-specific. He described the Company as a very large and well-known business in the PRC, with a multi-billion dollar valuation and broad recognition among consumers and investors. In his experience, the public announcement of an offer tended to be the most effective way of communicating to the market that a company was potentially for sale:

> *"In my experience again, working on more than 100 similar transactions, most of the enquiries around competing bids or looking to join a bidder group come after the public announcement. So that's almost the best advertising you can do."*[21]

173. He emphasised that the universe of investors "*who could potentially make a real offer and write an equity cheque big enough to do this,*" [22] was very small, a position compounded by the fact that this was a PRC-based business operating in a sensitive sector, making foreign strategic bidders difficult from a regulatory perspective. He also referred to the presence of large domestic competitors, whom the Company would not realistically approach, and said that expressions of interest in such circumstances were often motivated by a desire to obtain information for competitive reasons, creating distraction and hesitancy around providing sensitive information.

Ye Wei

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[20] Day 7 pp 96 and 97
[21] Day 7 page 114
[22] Day 7 page 115

174. Mr Ye was the Company's Chief Financial Officer from September 2019 and throughout the period in which the merger was proposed, agreed and completed between April and September 2020.

175. He continued in that role until about April 2021 when he moved to a chief executive role within a subsidiary and held non-executive directorships in other group subsidiaries. He made his affirmation as factual evidence on behalf of the Company for the trial, acknowledging that he did not have a precise recollection of every event and that he had reviewed documents to refresh his memory where necessary.

176. He described the Company as a Beijing-headquartered business operating online classifieds and internet services across mainland China. The Company was listed on the NYSE from its IPO in October 2013 until completion of the merger in September 2020. In mid-2020, shortly before the merger, he said the Company was the largest online marketplace in the PRC by unique monthly visitors to its website and Apps, with extensive geographic coverage, a sizeable sales presence and a large workforce. As at the end of 2019, total revenues were RMB15.6 billion, and management expected a significant revenue decline in Q1 2020 as a result of the COVID-19 pandemic.

177. He explained that the Company's core business comprised four verticals - housing/real estate, jobs, classifieds/yellow pages and automobiles (the "**Core Business**") - with housing the largest contributor. The Company operated multiple websites and Apps, including its principal classified platforms and dedicated platforms for real estate, recruitment and other services. In addition to the Core Business, the Company held a portfolio of long-term investments, generally minority stakes which were characterised as strategic but speculative. The investment department managed those investments, while finance was responsible for reporting their values under applicable accounting standards.

178. As to revenue generation, Mr Ye described the Company's principal customers as *"paying business users"*, who purchased subscription membership packages and online marketing services, along with smaller contributions from e-commerce services and other services. He described how membership and online marketing services were the dominant revenue streams prior to the merger and set out, at a high level, the principal cost categories, including platform operating costs, costs of goods or services on certain platforms, and traffic acquisition costs paid to advertising union partners.

179. He then identified the challenges the Company faced at the time of the transaction. He emphasised intense competition, particularly in housing and jobs, from well-funded competitors, which increased pressure to spend on sales and marketing in a saturated market. He said that by 2020, simple user growth was no longer an adequate basis for

revenue growth and that the Company was in the process of transitioning from an information/listings model towards a more transactional model across the verticals.

180. Consistent with Mr Yao's evidence, he described that strategic shift as the "All In Service Strategy" which he said would require significant investment and operational change. He also identified COVID-19 as having adversely affected business operations and activity levels among paying users, leading to reductions in certain discretionary spending in early 2020 while competition and investment needs persisted.

181. He noted that COVID-19 also affected the operations and valuations of some long-term investments, and he referred to broader geopolitical and regulatory uncertainty affecting the PRC economy and, by extension, the Company.

182. In his account, the real estate vertical faced the most acute competitive pressure, particularly from Beike, which operated a more transaction-based model. He described the Company's efforts to stabilise agent numbers by expanding into lower-tier cities, at the cost of additional advertising and start-up expenditure and with lower per-city revenues than in first-tier cities. He also described the structural and regulatory features of the PRC real estate market which, in his evidence, contributed to slower growth and shifting demand patterns.

183. In Jobs, he identified competition from established platforms and vulnerability to macroeconomic slowdown, with COVID-19 materially impacting the Company's client base of small to medium merchants. He also said that transitioning the jobs vertical to a more transactional model was expected to be difficult because of the Company's reliance on employment agencies.

184. For Classifieds, he described flat or declining active user numbers, significant competition in many categories, and COVID-19 impacts on transactions requiring physical inspection or in-person services. He said the Company had begun a transition to enable transactions through the platform but expected that pivot to adversely affect profitability in the short term by moving away from a high-traffic, high-gross-margin model.

185. For Autos, he characterised the vertical as strategically important but difficult to monetise in the PRC market, with COVID-19 reducing dealer activity and demand, and he identified longer-term uncertainty from the growth of cheaper electric vehicles.

186. Mr Ye then addressed why, in his view, the merger made sense in that context. By April 2020, he said management believed that the transition to a more transactional model was necessary to ensure the Company's ongoing viability. He described growth as having

stagnated, profits as becoming thinner, and competitors as being ahead in transactional revenue streams. He said the All-in-Service Strategy had been conceived in late 2019 and had begun to be implemented, but that successful execution would require significant investment, organisational change and, potentially, new acquisitions. In his view, the pivot carried material risks and could take at least two years before its success became clear. During that period, it would compress margins and profitability, which would likely depress the share price of the Company if it remained public. He said the transition would be easier and quicker as a private company, without the pressures associated with share-price scrutiny, investor relations and public reporting.

187. He also described the finance function and the Company's ordinary budgeting processes. He explained that the Company typically prepared a 12-month operating plan annually, using a bottom-up process with consolidation and top-down review, with board approval following finalisation.

188. During the year, the Company used monthly accounts and periodic updates to the operating plan, including quarterly consolidation and *"rolling forecasts"*. He stated that, for market communications, the Company provided quarterly revenue guidance, and that internally the Company's emphasis was more on revenue growth than profitability, partly because a number of costs were centrally managed and shared across verticals.

189. Finally, he explained how the five-year "Management Projections" for merger purposes were prepared. He said he was asked in May 2020 to prepare five-year forecasts for the Special Committee and Houlihan Lokey. Although the Company did not ordinarily prepare forecasts on a five-year horizon, he said he was familiar with that process from prior roles. He used the Company's quarterly rolling forecast spreadsheet as a template, using a bottom-up build up approach.

190. The first year (2020) was based on the 2020 operating plan, updated for the Q1 rolling forecast and management's estimate of business conditions as at May 2020, with an assumption that operations would return to a more normalised state by Q3 or Q4 2020. Later years were based on historical trends in revenue growth and competition, his assessment of likely market conditions and competitors' actions, and strategic "corrections" he considered the Company would need to execute in response to competitive pressures. He said the impact of the strategy could be seen in features such as lower customer advance balances, reflecting a shift from up-front cash receipts associated with subscription/listings models towards more transactional structures. He also said these projections included cash-flow elements, including working capital and

capital expenditure assumptions, and were prepared on a non-GAAP basis, differing from GAAP primarily by excluding stock-based compensation and goodwill amortisation.

191. In summary, Mr Ye explained that the management projections were constructed using a combination of bottom-up build-ups and trend-based assumptions across the Company's business lines, with different methodologies applied depending on the maturity and characteristics of each segment. Revenues, costs, margins and cash-flow items were forecast by reference to historical performance, expected strategic changes and management judgment, and the projections included working-capital and capital-expenditure assumptions prepared on a non-GAAP basis. Mr Ye emphasised that the projections reflected management's best assessment at the time, rather than a mechanical extrapolation or a precise prediction.

192. He made the broader point that, in May 2020, management's ability to estimate the long-term effects of COVID-19 on the Company and the Chinese economy was limited. He said modelling required assumptions as to the likely duration of the pandemic and restrictions, the speed of economic reopening, the operational effects on the business and the path of recovery. He said his only comparable experience was the 2003 SARS outbreak, which in his recollection lasted six to seven months in its main phase, and he emphasised that uncertainty increased as the forecast horizon extended. He stated that, by the time the merger closed, it had become apparent that the assumptions embedded in the projections had been optimistic and that it remained uncertain whether markets would revert to their pre-COVID-19 state or would undergo more permanent change

193. He then turned to the Company's actual performance between May 2020 and the valuation date. He said the management projections were finalised on 26 May 2020, and that by the time of the merger's completion on 7 September 2020 it had become clear to him that the Company was not on track to meet the projected 2020 revenue numbers. He said that this was apparent as early as July 2020, when he received the Q2 monthly accounts and the latest rolling forecast. He referred to an email he sent to senior management on 14 July 2020 in which he recorded that, in the two months since the projections were finalised, the Company's performance had worsened considerably and more than expected. In that email, he contrasted the May projections for 2020 profit and margin with the July rolling forecast, which showed materially lower full-year forecast profit and margin. He also summarised variances across verticals, including in yellow pages, jobs, real estate and used cars, attributing the adverse movement in real estate in part to increased traffic acquisition costs and noting that those figures did not yet reflect additional investment he said would be required to expand staff numbers in connection with implementing the All In Service Strategy.

194. In cross-examination, Mr Ye was taken in detail to the management projections, subsequent rolling forecasts, and other contemporaneous documents. He accepted that, by September 2020, the Company's actual performance in the first half of the year, and in particular in Q2, was better than had been forecast in the May management projections, but he maintained that the September rolling forecast for 2020 reflected a worse outlook for the Company than had been projected in May.

195. He was also cross-examined on the Company's external guidance to the market and the relationship between guidance ranges and actual performance. He accepted that actual revenues often exceeded the upper end of the guidance range, but said that small variances of 1–3% were not regarded as meaningful by the market, and did not typically provoke meaningful share price reactions. He emphasised the importance, in his view, of management credibility over time rather than precision to a specific midpoint.

196. Mr Ye was challenged on the treatment of margins in Company presentations and on the apparent tension between statements about long-term margin expansion and projections showing declining margins. He responded by explaining that the term "margin" was sometimes used interchangeably with profit in business communications and that, in his understanding, the Company's messaging was directed to absolute profit growth rather than percentage margins. He denied that management had ever projected a decline in absolute margin dollars and maintained that the projections were internally consistent with the Company's strategic narrative.

197. He was also cross-examined extensively on working capital, customer advances and the transition from subscription-based revenue to transactional revenue. He explained the accounting mechanics underlying customer advances and deferred revenue, emphasising that reductions in customer advances did not equate to a collapse in revenue but reflected changes in payment structure, subscription duration and the increasing use of pay-as-you-go services. He rejected the suggestion that the projections implied the effective elimination of an entire revenue stream and explained how receivables would tend to increase as advance balances declined.

198. Mr Ye was taken to drafts of Mr Hsu's engagement letter and accepted that he had been involved in negotiating a reduction in the advisory fee structure from the draft to the executed version. He accepted the mathematical consequences of the fee percentages at certain deal prices in the draft, but maintained that the final agreement reflected a negotiated outcome and that he had acted to protect the Company's interests. He also accepted that a draft termination and release was prepared when issues were identified

with the executed version, and that legal advice was sought when it became apparent that termination was not straightforward.

199. Mr Ye was further cross-examined on his knowledge of Mr Yao's participation in the buyer group and on whether he had discussed his own future or potential incentives in connection with the transaction. He maintained that he did not engage in discussions with Mr Yao about his personal position at the relevant time and said that his focus remained on executing the transaction and managing the business through a period of extreme uncertainty. He acknowledged that the transaction was professionally significant to him and that he found the experience of a privatisation transaction interesting from a career perspective, but he rejected the suggestion that he was motivated by personal gain or that management projections were influenced by personal incentives. When taken to documents relating to a management cash pool and post-closing equity incentives, he accepted that he fell within the category of non-CEO management but disputed the characterisation of the equity allocation as "enormous" or unusually attractive, particularly when compared to ongoing public-company equity compensation and taking into account dilution and uncertainty of liquidity.

200. In re-examination by Mr Imrie, Mr Ye was taken back to the sequence of emails and drafts relating to Mr Hsu's engagement letter. He explained that his focus in those discussions was on negotiating and reducing the fee structure and on ensuring that appropriate board-approval protections were included. He said that the omission of the board-approval clause in one version of the agreement was identified by him, that he raised the issue with counsel, and that it was ultimately corrected after an explanation was given that the wrong version had been circulated.

201. He was also re-examined on the practical differences between implementing strategic change as a public company and as a private company. He explained that, while a company should pursue the right strategy regardless of ownership structure, in practice a public company faced constraints arising from market reaction, share-price volatility, investor scrutiny and the impact of short-term losses on management retention. He contrasted this with a private company, where those constraints would not apply. He emphasised that the management projections had been prepared on the assumption that the Company would remain public for valuation purposes, even though more aggressive, loss-making investment might occur post-privatisation.

202. Finally, Mr Ye was re-examined on rolling forecasts prepared after May 2020. He explained the relationship between internal rolling forecasts and the management projections, and how deferral of advertising expenditure had temporarily improved short-term profitability

while worsening later quarters. He denied that the management projections were deliberately understated or *"sandbagged"*, and said that a lower deal price would have been against his personal interest because his options would be cashed out at the transaction price. He maintained that the projections reflected management's best judgement at the time in conditions of significant uncertainty.

Tianyi 'Tony' Jiang

203. Tony Jiang is a co-founder and partner of Ocean Link Partners Limited, a PRC-focused private equity firm. Ocean Link led the September 2020 take-private of the Company. In his affirmation, he explained Ocean Link's role and steps taken in relation to the transaction.

204. He also said that he had previously given a deposition in April 2023 pursuant to US 1782 subpoenas issued at the behest of the Dissenters, which were resolved on terms that no further Ocean Link disclosure would be sought.

205. Mr Jiang traced Ocean Link's institutional background and governance, emphasising that Ocean Link operated with an investment committee (comprised of the same four persons as its board, including representatives of General Atlantic and Ctrip) and that a binding commitment required at least three votes. He described Ocean Link as continuously screening the market for *"large ticket"* opportunities.[23]

206. As to the genesis of Ocean Link's proposal, Mr Jiang said he had long been familiar with the online classifieds sector, having led Carlyle's investment in Ganji.com and having met Mr Yao in connection with Ganji.com's later acquisition by the Company. He said that, early on 2 April 2020, he received a call from Mr Hsu, who said he was representing the Company and had been retained to explore strategic or capital markets options. Mr Jiang's evidence was that Mr Hsu did not suggest a preferred transaction type, described the Company as open-minded, and there was no price discussion at that stage.

207. He said that the Company was on their radar because Ocean Link focuses on consumer, travel, and TMT-based industries in the PRC. Drawing on his prior experience in the online classifieds sector, including Carlyle's investment in Ganji.com and its later acquisition by the Company, he reviewed the Company's trading history, SEC filings, analyst research and peer multiples. He formed the view that the Company was trading at a higher multiple than comparable companies with similar growth and margin profiles, while facing increasing competitive pressure from more innovative rivals. In his assessment, those

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[23] Witness statement para 10

dynamics limited the scope for offering a significant premium and pointed towards a take-private transaction as the most practical means of undertaking the substantial operational and strategic changes he considered necessary to address the Company's deteriorating competitive position, which included *"major surgery"* to reverse its worsening competitive position.

208. He said he chose an opening non-binding price of $55 per ADS which was intended to be a serious premium to a well-traded stock price and sufficient to ensure engagement, given that he understood other parties were being contacted. He described $55 as being a double-digit premium, on a price of $50, taking into account share price performance over different historical periods. The shares were already trading at a premium relative to the Company's comparable companies, and he considered that $55 was expensive, but they wanted to put their *"best foot forward"*.

209. He said he alerted Ocean Link's investment committee informally before reverting to Mr Hsu but did not convene a formal committee meeting because the proposal was non-binding. Later on the 2 April, he sent the preliminary offer letter copying Skadden who he understood from public filings to be the Company's US counsel (the "Original Proposal").

210. After he made the proposal, he made a courtesy call to Mr Yao, but he said he did not have any material discussions with him about the proposal. He also contacted General Atlantic's leadership as a courtesy, given General Atlantic's relationship to both the Company and Ocean Link, not expecting any immediate response.

211. He said the Company publicly announced Ocean Link's proposal immediately. The disclosure of the proposal would have the effect of flushing out any potential topping bidders or competing participants. On his account, if $55 per ADS had been perceived as an undervalue, third parties were free to submit a higher bid even after later exclusivity arrangements, and sophisticated bidders could still approach notwithstanding exclusivity, just as Ocean Link itself had done in the earlier eHi take-private by launching an unsolicited counterbid.

212. Mr Jiang described receiving inbound approaches from other private equity firms and undertaking his own outreach to gauge interest, but said no alternative sponsor ultimately partnered in a serious way. He also described Mercury Capital Advisors acting as a placement agent to solicit co-investment LPs. Many investors were contacted, few executed NDAs, fewer progressed, and only a small number ultimately co-invested.

213. He said that he learned Warburg Pincus had also been approached and asked Mr Hsu for an introduction. He then had introductory discussions with Warburg Pincus and later with

General Atlantic. His evidence was that Warburg Pincus considered $55 *"too high"* and was price-sensitive from the outset. Progress towards a viable consortium only crystallised in late April when Warburg Pincus and General Atlantic each indicated non-binding interest in joining. The buyer group then approached Mr Yao to discuss participation.

214. On 30 April 2020 Mr Yao signed an exclusivity agreement with Ocean Link, Warburg Pincus and General Atlantic. Mr Jiang's evidence was that the group had wanted a longer exclusivity period of 180 days. Mr Yao, however, had insisted on a shorter period of 90 days. This meant the parties had significantly less time to negotiate and complete the transaction. This compressed timeline increased the urgency and pressure to execute the deal efficiently, particularly given the disruptions and uncertainties caused by the COVID-19 pandemic.

215. He stated that there was always a possibility of another bidder competing for the deal and making a topping bid, even after an exclusivity agreement, noting that Ocean Link had made such a topping bid in the Ehi take -private.

216. Mr Jiang highlighted the deal uncertainty created by Tencent's voting position. He said that although the buyer group and Mr Yao could command roughly half the voting shares, shareholder approval still depended materially on Tencent and/or minority shareholders. On his account, Tencent did not commit early which created real uncertainty for the buyer group. When it ultimately signed the rollover agreement, it retained discretion to abstain or vote against the transaction at the EGM.

217. With respect to the Special Committee, he said the buyer group's due diligence ran through May and early June 2020, including virtual data room review and interviews. He said the buyer group received management projections at the end of May, and that it was his assessment those projections assumed steady growth and market-share defence which would require heavy investment and involved significant execution risk.

218. Bain's commercial diligence reinforced concerns about competitive headwinds and suggested to him that $55 per ADS was at the top of what was collectively acceptable.

219. He gave evidence that the Special Committee pressed for a higher price and described diverging sponsor attitudes. Ocean Link was most motivated to close, having initiated the public proposal and being concerned about reputational consequences if the transaction failed. General Atlantic was more equivocal while Warburg Pincus was most resistant, indicating it would withdraw if the price increased. Mr Jiang said that the Special Committee argued that the market for comparable companies had improved after 2 April and that the offer should rise accordingly, but he considered that those peers had not

suffered the same competitive pressures as the Company and that the buyer group could not ignore what it had learned in diligence. But, as he put it, *"the special committee would not accept a deal at $55. It was going to be a no."* Ocean Link proposed a small uplift to around $55.30 but this did not resolve matters.

220. Mr Yao gave assurances about commitment to transformation post-closing, which increased Ocean Link's comfort. Ultimately, the buyer group agreed to $56, but only on the basis that a proposed 'majority-of-the-minority' condition would not be included, which Mr Jiang considered to be inconsistent with deal certainty in a transaction of this kind.

221. Finally, Mr Jiang addressed post-closing plans and the significance of later performance. He said Ocean Link's investment model focused on value creation over a multi-year holding period and contemplated substantial operational change, including upgrading recruitment leadership, improving platform technology and user experience, strengthening algorithmic matching in recruitment, investing in transaction-based "closed-loop" products, and rejuvenating the brand through sales and marketing. He said those plans rested on two assumptions, macroeconomic stabilization post-COVID-19 and stabilization of competitive pressures, and that both assumptions proved wrong.

222. He said many initiatives did not come to fruition as hoped, COVID-19 and the PRC economy deteriorated, competitive losses continued, and interest rates rose, weakening profitability. On his account, the Company materially underperformed management projections in 2021–2022 and there was no expectation of a reversal in 2023. He expressed some buyer's remorse, stating that, with hindsight given subsequent performance, $56 per ADS was a significant overpayment, and that Ocean Link would not have paid that price had it known then what it knew later.

223. In cross-examination, it was suggested to Mr Jiang that he had a long-standing relationship with Eric Zhang of General Atlantic which was intended to suggest that the members of the Buyers Group were not independent actors.

224. It was also suggested to him that if the Court were to find that the fair value of the shares was higher than $56, it would affect his personal financial interest. He accepted that but did not agree that he was incentivized to give evidence that would ensure that the Court awarded the lowest fair value possible. He accepted that Ocean Link also had a financial incentive for their investment in the Company to be as profitable as possible.

225. With respect to the use of Signal by the buyer group, he accepted it was used to communicate with Mr Yao and that he sent messages in the group chat which would have

been received by Mr Yao but denied having any one-to-one communication with Mr Yao. It was his evidence that Signal was used to deal with logistics, like the process co-ordination call to which he was referred by Mr Dhillon. He could not say whether or not that call later took place on Signal. He accepted that using the auto-delete function was not ideal but doubted anything of significance would have been put in the chat knowing it would be deleted. He would have protested otherwise. He agreed that his assertion that it was only used for logistics could not be tested because the messages no longer existed but did not think it breached the disclosure requirements as the Court would only be interested in important discussion and important transaction documents.

226. He confirmed that Ocean Link had undertaken a leveraged buyout analysis ("LBO") to estimate the potential return (IRR) that they would make on this deal. The LBO analysis was not disclosed in these proceedings because of concerns that information contained therein would be misused by Ocean Link's competitors. He denied the suggestion that he did not disclose it because the analysis would have contradicted his written statement. He said he had been helpful and forthcoming and had volunteered for the deposition after he discovered that his business partners were being harassed by some of the Dissenters who had caused process servers to show up at their house and bang on their doors. He had volunteered because he had the more detailed knowledge of the transaction.

227. He was cross-examined on Dragoneer which invested in the transaction through Ocean Link and his evidence that they had dithered on the amount they were prepared to invest, first seeking to invest between $100 - 200 million before later committing to a smaller amount. Taken to a series of emails exchanged between himself and Dragoneer, he accepted that they had received subscription documents from General Atlantic but defended describing them as lacking conviction because after their first indication, they then advised him they were going to go in a different direction only to show up at the last minute trying to get into the deal. It was suggested to him that Dragoneer's issue with the deal was that Ocean Link had demanded fees, whereas Dragoneer's fund documents made it impossible to pass additional fees to their limited partners and that they usually invested on a fee-free basis.

228. Mr Jiang accepted that he told Dragoneer that it was very difficult to get the incremental portion they sought to invest in the deal through Ocean Link, but said it was not true; it was his way of politely turning away somebody who had been wavering and showed up at the last minute, at the transaction fund capital call, to make the request. He did not accept what Dragoneer said in their email exchange with Ocean Link which was that a deal had been made in April that Dragoneer would get a part of. He had not sought to contradict them in reply for the reason that *"In the email exchange between two business*

partners, we probably don't go that confrontational." He accepted that he had described the demand to get into the deal as hot, but this too was only a polite way of turning them away. Mr Dhillon suggested his responses were inconsistent with his own assertions in his email where he said that he had multiple limited partners clamouring for allocation. His email implied that there was difficulty in securing incremental allocation because demand had exceeded supply and that Dragoneer were wanted investors, which contradicted Mr Jiang's evidence that Dragoneer were uncommitted and wavering.

229. In re-examination by Mr Imrie, Mr Jiang explained that the fundraising process was in fact very difficult as potential investors were lukewarm and it had taken them some time to piece together a deal. When Dragoneer showed back up at the last minute, he sought to dissuade them because there were many moving pieces and he didn't like that Dragoneer went from $100 million to zero and then to $25 million but his communications with Dragoneer were designed to maintain good relations with them as they were introduced by General Atlantic.

230. Having considered Mr Jiang's affirmation, his deposition evidence, and the manner in which he responded under cross-examination, I am satisfied that he was, in material respects, a generally straightforward and reliable witness. His evidence was measured, internally consistent, and, where appropriate, he readily accepted matters not favourable to his position. For example, he acknowledged the use of Signal, accepted that its auto-delete function was *"not ideal,"* and did not attempt to minimise the fact that this left gaps in the contemporaneous record. He also accepted without hesitation that the buyer group had engaged in the LBO analysis which was not disclosed and explained the reasoning behind that omission without defensiveness. These concessions support the impression of a witness who was not attempting to tailor his evidence to an advocacy narrative.

231. At the same time, aspects of his evidence require cautious treatment. In particular, his explanation regarding Dragoneer's wavering interest and his own *"polite"* attempts to discourage their last-minute subscription requests suggested that he was trying to recast commercial decisions in a benign way. His account of turning Dragoneer away because they lacked conviction was, at points, difficult to reconcile with contemporaneous communications in which he stated that limited partner demand exceeded available allocation.

232. While I do not find that Mr Jiang was deliberately misleading, the contemporaneous material shows that the transaction was fully subscribed until Orchid Point withdrew. Against that background, his description of the deal as "hot" supports the inference of

strong investor demand, notwithstanding his attempt in evidence to downplay the significance of that language. That sits uneasily with his account of Dragoneer's lack of commitment and limited investor interest. The significance of that tension falls to be assessed in light of the evidence as a whole, to which I will return below.

233. Likewise, while his assertion that he had no substantive one-to-one communication with Mr Yao is plausible, the absence of preserved Signal messages inevitably limits the Court's ability to test this proposition. Mr Jiang's confidence that nothing of significance would have been discussed on a platform set to auto-delete is not enough for the Court to safely draw the same conclusion. Against that is the fact that he volunteered this information and did not attempt to minimise the obvious risk of using Signal. This weighs against a finding of deliberate concealment.

234. Overall, I found Mr Jiang to be an experienced private-equity actor who understood the dynamics of the transaction and gave evidence that was, in the main, careful and credible. I do not consider that his credibility was materially undermined in cross-examination, and subject to the caveats identified above, I accept his evidence.

THE MERGER PRICE AS EVIDENCE OF FAIR VALUE

The Experts' View

235. The Privy Council decision in *Trina Solar* makes it clear that the reliability of the transaction price forms part of the Court's assessment of the appropriate valuation methodology and must be evaluated before determining the weight to be given to competing indicators of value. Before turning to the expert valuation evidence, I turn to consider the experts' view on the deal process and the reliability of the transaction price.

236. By way of brief introduction to the experts, each is an academic of high standing, well versed in valuation methodology. The Company relied on Professor Daniel Fischel who is Chairman of Compass Lexecon, a consulting firm that specializes in the application of economics to a variety of legal and regulatory issues. Compass Lexecon has 21 offices on four continents and a professional staff of more than 825 individuals, including more than 200 PhD economists. Compass Lexecon is affiliated with professors from major universities throughout the world, including two professors who have won the Nobel Prize in Economic Science. Professor Fischel was also at the time of the hearing, the Lee and Brena Freeman Professor of Law and Business Emeritus at The University of Chicago Law School. He had previously served as Dean of The University of Chicago Law School, Director of the Law and Economics Program at The University of Chicago, and as Professor of Law and Business at The University of Chicago Graduate School of Business, the Kellogg School of Management at Northwestern University, and the Northwestern University Law School.

237. The Dissenters' expert was Professor Bilge Yilmaz, a Professor of Finance at the Wharton School of the University of Pennsylvania who, at the time of the hearing, held the endowed Wharton Private Equity Professor chair. He has been a tenured faculty member at the Wharton School since July 2009.

238. Their task was to assess the fair value of the Company's shares as at the valuation date on the assumption that the merger had not occurred and that the Company would continue as a going concern. Each expert was instructed to express independent opinions and not to advocate for the instructing party. The experts exchanged reports and later conferred and produced a joint statement identifying areas of agreement and disagreement.

239. They gave their evidence with, might I say, patience, professionalism and clarity, and succeeded in making the dense valuation methodologies comprehensible. The Court is satisfied that both were independent, notwithstanding the chasm between the estimates of value at which they each arrived.

Professor Fischel's View

240. Professor Fischel's view was that the merger price of $56 per ADS was the product of an arm's length negotiation between a willing buyer and a willing seller. Although insiders were present on the buy side, he considered that the Special Committee operated with independent legal and financial advisers and had, on the basis of the materials he reviewed, sought price increases, and functioned effectively in protecting the interests of the minority shareholders, securing an uplift from $55 to $56.He regarded the merger price as a *"very important"* indicator of fair value, though not identical to it in the circumstances where he considered that the merger price included a substantial premium.

241. A substantial portion of his evidence was directed to rebutting the suggestion that the price of $56 was "pre-determined" at the outset. In cross-examination, Professor Fischel accepted that internal Warburg Pincus documents, most notably the 31 March 2020 deck, recorded that "*Founder Michael Yao targets final price of $56/share.*" He also accepted that Warburg Pincus modelled the transaction at that price. However, he maintained that these statements did not evidence any agreement, tacit or otherwise, to transact at $56 per ADS. Rather, they reflected Warburg Pincus's need to test the economics of all prices that might realistically arise, including a price they understood Mr Yao might prefer. He highlighted that the same document recorded that Warburg Pincus regarded $56 per ADS as *"a bit high,"* and that Warburg Pincus believed the economically attractive range for its own return profile was $50–52. In his view, this demonstrated that the buyers were evaluating the price independently and, importantly, not following a pre-agreed number. He repeatedly returned to the point that without investment committee approval, no

agreement could exist. On this basis alone, he considered the inference that the merger price had been pre-determined to be unsustainable.

242. Professor Fischel was taken to another Warburg Pincus bullet point in the same exhibit which stated that the *"inside-30-day VWAP 9–15% premium is too thin and the lowest premium on precedent transaction is around 18%."* Mr Adkin suggested that this language showed that, by reference to transaction comparables, the premium at $56 was at the lower end of the range. Professor Fischel accepted that Warburg Pincus did not describe the premium as *"substantial"*, as he recorded in his Report, but maintained that, in his view, a premium of that magnitude over market price could fairly be characterised as such.

243. Professor Fischel rejected the further inference that the reference to a *"thin"* premium contradicted Warburg Pincus's position that $56 was expensive from the buyer's perspective. He explained that his focus was on buyer economics rather than shareholder precedent premiums, and that Warburg Pincus's contemporaneous modelling showed that, at $56, the transaction failed to meet its target rates of return. He relied in that regard on Warburg's repeated statements elsewhere that $56 was "a bit high" and that a price in the range of $50 - 52 would be more attractive.

244. The difference between Professor Fischel's analysis and the Dissenters' case on this point is illustrated in the following exchange in cross-examination:

Q. 'The inside–30–day VWAP 9–15% premium is too thin in our view. ... The lowest premium on precedent transactions is around 18%.'

"Let's just make sure we absolutely understand what that is saying. What they are saying there is, at $56 a share, the premium to the 30–day previous trading price, if I can put it in those very simplistic terms, is not enough because precedent transactions –– in other words, take–privates that have been done previously –– the lowest is 18%, it's higher; yes? Do you understand, professor?

A. I understand perfectly. They are saying that $56 is too high because their return is too low.

Q. No, they are saying the opposite, professor.

A. Excuse me ––

Q. Let's just take it in stages.

A. Look at the fourth bullet point.

Q. Yes, yes, we will come to that, but I want to take it in steps because you made a comment on the second bullet, and I want to suggest to you what it means, and it may be that what we understand it to mean is different to what you understand it to mean, so let's just expose that difference , if there is one:

"The inside–30–day VWAP 9–15% premium is too thin our view."

Let's just take that in steps. What they are talking about there is the premium that $56 per – it must be ADS –– is to the previous trading price over a fairly short period; yes?

A. Yes.

Q. Thank you, right. They are saying that's too thin. So that's too little; yes? It's not a big enough premium.

A. It's the opposite. It means the premium is too high. If you look –– it's too thin, meaning their return is too low. And if you look at what you keep wanting to avoid, the fourth bullet point

Q. We will come to that, I promise.

A. $56 is a bit high: "We believe a price between $50–52 would be attractive ..." That's what this document is saying. And the later document is at the same price, they haven't changed their view. They are saying –– well, I don't want to give a speech.

Q. Okay, thank you. We will come to the fourth bullet, but I want to suggest that your understanding of the second bullet is just wrong. What they are saying in the second bullet is that thinness of premium isn't going to be enough because the lowest premium on previous transactions is 18 per cent, which is a higher premium. That's what I'm putting to you, but you disagree with that; yes?

A. I don't disagree with that, but it's in the context of their analysing their return from this particular transaction.

...

And that's why they did all this modelling of $56, to demonstrate that the return to [for their returns], and that's why these two documents are fully consistent."

245. With respect to the 10 June deck, Professor Fischel accepted that Warburg Pincus described $56 as the *"final target price,"* and correctly anticipated that the Merger Agreement would be executed on 15 June at that price. He rejected, however, the inference advanced by Mr Adkin in cross-examination that the transaction was a

'pre-cooked deal' in which the final price had been fixed in advance and the process manipulated to achieve that outcome.

246. He explained that by early June 2020 the Special Committee had, on the evidence of Ms Dong and the proxy disclosure, asked Mr Yao to suggest a price to break a negotiation impasse. Mr Yao proposed $56 per ADS. With no competing bidder and a limited universe of sponsors capable of financing an $8 billion take-private during the pandemic, it was unsurprising that $56 became the live number around which the parties converged. Warburg Pincus therefore modelled $56 not because agreement had been reached in March, but because by 10 June it was the only feasible closing price. Professor Fischel emphasised that the same June deck continued to show Warburg Pincus's concerns about IRR, equity contribution, and return metrics at $56, which he considered decisive evidence that Warburg Pincus had neither agreed to nor embraced the price earlier in the process

247. As to the Special Committee, Professor Fischel accepted he was not aware of the private communications between Ms Dong and Mr Hsu which were revealed at trial. When asked whether undisclosed communications by a Special Committee member with an outside adviser would be inappropriate, he accepted that they would, assuming confidentiality obligations applied. Asked whether it would be inappropriate if Mr Hsu conducted negotiations with the buyer group in the circumstances where he was considering becoming a buyer himself, Professor Fischel said that would have to considered in light of his contract given the incentive as buyer to pay a lower price and the fact that his compensation which rises if there is a higher price.

248. Professor Fischel considered the buyer group to have been motivated to pay the lowest price consistent with securing sufficient support to complete the transaction. He accepted that private equity buyers typically evaluate investments through the lens of expected returns, but he did not consider that this, as a matter of economic theory, undermined the market validity of the agreed price. In his view, buyers acting in their own economic interest to secure an acceptable return is inherent in any negotiated transaction and does not negate the arm's-length nature of the process.

249. Ultimately, Professor Fischel regarded the negotiation between the Special Committee and the buyer group as arm's length and effective. He placed significant reliance on the negotiated increase from $55 to $56 in coming to that view. [24]

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[24] Supplemental Report at para 52

250. With respect to the assertion that the process was flawed because there had been no market outreach, he said this in his Supplemental Report:

> *"55. ...the academic literature does not support the hypothesis that auctions are superior to negotiated transactions when public companies like 58.com are sold. ..., Rosenbaum and Pearl (2013), which is cited favourably in the Yilmaz Report, state that "if speed, confidentiality, a particular transaction structure, and/or cultural fit are a priority for the seller, then a targeted auction, where only a select group of potential buyers are approached, or even a negotiated sale with a single party, may be more appropriate." Rosenbaum and Pearl (2013) also explain that "[i]n a negotiated sale, ideally the seller realizes fair and potentially full value for the target while avoiding the potential risks and disadvantages of an auction," which "may include business disruption, confidentiality breaches, and potential issues with customers, suppliers, and key employees, as well as the potential stigma of a failed process.""*

Professor Yilmaz's View

251. Professor Yilmaz took a very different view. His view was that the process was compromised from the outset, and that the merger price could not be relied on as a measure of fair value.

252. His central thesis was that the founder, Mr Yao, and senior management were economically aligned with the buy-side and incentivised to secure the lowest price at which a transaction could be completed. He emphasised that in a leveraged take-private, a rollover shareholder becomes a "net buyer" because the use of company cash and new leverage increases the rollover holder's post-transaction ownership. He therefore regarded it as economically implausible that Mr Yao genuinely sought the highest possible price for minority shareholders.

253. He also rejected the proposition that management were incentivised to maximise the cash they would receive at closing. He explained that diversification, deal-completion risk, and lower option strike prices could favour a lower transaction price. He accepted, however, that he had not analysed the actual incentive arrangements applicable to management in this transaction and that his conclusions were based on general economic theory rather than transaction-specific data.

254. A significant part of Professor Yilmaz's critique concerned the role of Mr Hsu and, in particular, a message suggesting that Mr Hsu may have intended to invest in the buyer consortium, though he accepted that he could not prove this, and the Company confirmed Mr Hsu did not. Nonetheless, he maintained that the existence of such a communication indicated incentives misaligned with the Company's duty to secure the highest price. He also saw Mr Hsu's close relationship with Mr Yao, and the Special Committee's reliance on him for negotiations, as undermining the independence of the process.

255. He contended further that the deal price had been *"anchored"* at $56 per ADS from late March. He had come to that view after considering internal Warburg Pincus communications which recorded that Mr Yao *"targeted"* that price and that Warburg Pincus modelled it as a *"final target price"*. In cross-examination, it was put to him that the Warburg Pincus materials reflected information relayed by Mr Hsu rather than a direct communication from Mr Yao. He accepted that Warburg Pincus had not agreed to the price, that the buy side regarded $56 per ADS as too high from a return perspective, that there was no binding agreement, and that Warburg Pincus had not completed due diligence. He nonetheless considered the early appearance of $56 per ADS in Warburg Pincus's internal modelling, communicated *via* Mr Hsu, to be highly unusual and indicative of premature convergence on a price before any formal process began.

256. Professor Yilmaz also suggested in his Report that General Atlantic and other members of the eventual consortium were aware of a forthcoming take-private proposal *before* Ocean Link's announcement. In cross-examination, he accepted that the evidence did not establish this, and that he may have overstated parts of his Report relying on speculation or inference.

257. Finally, he was critical of the Special Committee's conduct, particularly Ms Dong's private communications with Mr Hsu and the Special Committee's decision to delegate negotiations to an adviser he viewed as conflicted. He regarded the Special Committee's process as insufficient to neutralise the founder's influence or to generate competitive tension. In his opinion, the deal process did not approximate an arm's-length negotiation, and, in the absence of a market check, the merger price lacked reliability as an indicator of fair value and had to be discounted.

258. Having set out the experts' respective views on the transaction process, it is necessary to record that neither expert had the benefit of seeing or hearing the factual witnesses give evidence or be tested under cross-examination before preparing their Reports. Their characterisations of the deal process were formed by reference to the contemporaneous documentary record and communications relied upon by the parties. Where their views

rest on assumptions about intent, coordination, or the dynamics of negotiation, those must be assessed against the factual findings made by the Court on the basis of the full evidential record.

Findings of Fact and Analysis of the Transaction Process

259. The Dissenters' original submissions on the law were framed by reference to the decision in *Trina Solar* (CICA) in which the Court of Appeal adopted a binary approach to merger price evidence, holding that where the deal process was materially flawed, particularly in a management-led transaction, the merger price was not a reliable indicator of fair value and should be given no weight at all. On that footing, the trial judge was said to have erred in law in assigning the merger price any probative value given the serious process deficiencies he had identified. The Privy Council rejected that analysis. The Board allowed the appeal, set aside the decision of the Court of Appeal, and restored the valuation reached by the Judge at first instance whose decision to assign some weight to the merger price, notwithstanding an imperfect process, was a central focus of the appeal. In doing so, the Board disapproved the Court of Appeal's legal analysis and reformulated the proper approach to merger price evidence in section 238 proceedings.

260. Much of the Dissenters' analysis, however, proceeded on propositions derived from the Court of Appeal's decision and materially influenced the way in which their case was presented. Their first proposition was that the Company bears a strict or elevated evidential burden to justify reliance on the merger price, relying on Birt JA's statement that

"...the Company bears the evidential burden to show that conditions justifying reliance on merger price are satisfied."

261. Read literally, that formulation suggests a framework under which the merger price is presumptively unreliable unless a company can affirmatively demonstrate to the Court that certain conditions have been met. The Privy Council held that such an approach does not accurately reflect the nature of the Court's task under section 238. The valuation exercise is not an adversarial contest in which presumptions are displaced by proof, nor is it a binary inquiry in which the merger price is either admitted or excluded. Rather, the Court sits as an expert valuer and is required to evaluate all relevant evidence holistically in order to arrive at its own assessment of fair value.

262. The Dissenters further argued that management buy-outs inherently attract heightened scrutiny, submitting that it is *"very difficult"* for a merger price to be relied upon where the founder stands on both sides of the transaction. While the Privy Council

acknowledged the risks associated with such structures, it made clear that there is no rigid presumption that management participation or founder control, of itself, taints the transaction price. Such features are relevant because they may give rise to conflicts of interest or informational asymmetry. However, labelling a transaction as an MBO does not dictate the outcome of the valuation exercise.

263. Properly understood, the *"heightened scrutiny"* to which the Privy Council referred is not a doctrinal rule which is triggered whenever management is a participant in the deal, but an analytical stance adopted in response to risk. Process concerns require assessment only to the extent that they can be shown, on the evidence, to have plausibly distorted the price-formation process.

264. The Dissenters also submitted that a robust market check is a prerequisite to reliance on the merger price, and that a failure to canvass all logical buyers renders the price inherently unreliable. The Privy Council rejected that proposition. It made clear that Cayman Islands law imposes no mandatory market check requirement as a matter of valuation principle. Whether, and to what extent, the existence or absence of competitive tension bears on reliability depends on the factual matrix and the evidence as to how the price was actually formed.

265. Similarly, the Dissenters' reliance on Delaware jurisprudence including *PetSmart*, *Solera* and *Dell* as establishing a checklist of procedural requirements was misplaced. The Privy Council made clear that while such cases may provide useful guidance, they do not constitute a procedural template against which Cayman transactions are to be judged.

266. The Dissenters' overarching submission, that because the deal process was flawed, the merger price must be given zero weight, does not survive the Privy Council decision. A flawed process does not automatically disqualify the merger price.

267. In his further submissions on behalf of the Dissenters following the decision in Trina Solar (PC), Mr Adkin did not materially retreat from the Dissenters' trial position on merger price. He reframed it, but the substance remains a zero-weight case dressed in the *"sliding-scale"* language employed by the Board.

268. Although he accepts that the factors bearing on the reliability of merger price are not threshold conditions and that reliability is not, in principle, a binary concept, he maintained that the alleged defects in the present case were so extensive that, even applying a sliding-scale approach, the merger price should be accorded no weight at all, rather than merely reduced weight, because the alleged process defects were said to *"square to zero"* in evaluative terms.

269. I am not persuaded that this submission reflects the evaluative approach mandated by the Privy Council or is supported by the evidence.

270. I turn first to the Dissenters' primary challenge to the transaction price which is that the price was fixed or pre-determined at an early stage, and that the subsequent negotiations were performative.

271. That challenge rests on a body of documentary material which is said to show that $56 per ADS was treated as a settled outcome before the Special Committee engaged in price discussions. I address that contention by considering whether the documents relied upon support the inferences the Dissenters invite the Court to draw, viewed in the context of the evidence as a whole.

272. The Warburg Pincus documents on which the Dissenters' rely consist of internal buy-side communications and working materials in which $56 per ADS is discussed as a potential endpoint. Properly analysed, those documents do not establish that the transaction price was fixed or pre-determined. The 29 March internal Warburg Pincus email on which the Dissenters place substantial reliance was an internal update attaching *"materials for reference"* and outlining a proposed strategy, including the possible launch of a non-binding offer, with *"consortium, financing, [and] diligence"* to follow and with Warburg Pincus still *"deliberating"* between possible non-binding approaches with Mr Yao or by themselves.

273. Although it was stated that *"US$56 as final price"*, the same materials refer to higher figures being discussed, describe $56 as *"$2 below where we spoke"*, and record internal views that even $56 was *"a bit high"*, with lower ranges modelled as economically attractive. Read as a whole, they evidence price exploration and internal advocacy, as Mr Yao in his evidence suggested [25], and not that the price had been fixed.

274. Mr Yao's evidence is that he became aware that the price of $56 per ADS surfaced in March 2020 during early contacts with Warburg Pincus, but that he had not expressed any view on a final price because that price must be decided by the market and that he would not have done so for the reason that it risked *"putting a ceiling"* on what any private-equity bidder might offer which would reduce his gains if he chose to be a seller.

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[25] Day 8, page 94, line 1-7 "I.think.what.Julian.was.trying.to.do.is.to.describe.a.perfect.situation.for.__in.order.to.get.approval.of.the.Warburg.Pincus¡_So.he.would.describe.that.I.would.be.part.of.the.consortium?Tencent.would.be.part.of.the.consortium?because.his.initial.suggestion.of.P[illegible].per.share.was.not.approved.internally.at.Warburg.and.__so.in.this.letter.mention.the.price.is.US[illegible]

275. Mr Yao also said that he did not inform Mr Hsu that the merger price should be $56. He described Mr Hsu as variously as acting like a *"broker"* or *"real estate agent, ... So, he would tell one party, say, oh, I have something –"*, in other words, operating in the manner of an intermediary, seeking to advance discussions with potential sponsors rather than rather than conveying a fixed or predetermined price. I have considered whether that explanation is consistent with the contemporaneous evidence. In that regard, I attach weight to Ms Dong's evidence as to Mr Hsu's manner of communication. She described him as someone who *"likes to show off his relationship with the CEO"* and who has *"his own agenda" when* speaking to others, such that she did not regard his statements as fully reliable or appropriate for formal recording. That characterisation supports the conclusion that representations made by Mr Hsu to Warburg Pincus, including statements suggesting that Mr Yao was *"dead serious"* or that a price of $56 was sought, reflected Mr Hsu's own tendency to overstate his authority or influence, rather than the communication of a price fixed or directed by Mr Yao.

276. The contemporaneous evidence of Warburg Pincus's initial disinterest in the proposed transaction is also inconsistent with the notion that the price was fixed from the outset. Warburg Pincus initially indicated that it was not prepared to participate in any 58.com transaction when first approached, citing market and COVID-related uncertainties. The March deck demonstrated that they subsequently regarded a price in the mid-$50s as high in light of their return requirements.

277. In my view, the fact that a key financial sponsor with the capacity to lead a transaction of this scale was not initially receptive when first approached, and later resisted an increase above $55 is difficult to reconcile with the assertion that the price had been fixed or anchored at an earlier stage. The evidence supports the conclusion that the merger consideration reflected the buyer group's economic constraints - their IRR - rather than any pre-set target communicated by the founder.

278. What about Warburg Pincus's reference to the premium being *"too thin"?* The Dissenters sought to establish that expression meant that the offer premium was too low and that the price undervalued the Company.

279. What I understood from Professor Fischel's evidence is that at $56, the premium over the trading price was only about 9-15% whereas precedent take-privates typically involve ~18% or more. If the Board or shareholders insisted on precedent type premiums the buyer might have to offer more than $56. At $56, Warburg Pincus already thought the price is *"too high"* meaning that their return at that price is too low. If they have to raise the premium to match precedent optics, their IRR goes down. The deck showed that

Warburg Pincus was concerned that, on the other side, their equity cheque was too large at $38. As Professor Fischel put it,

> *"...they are complaining that this price is not a price that gives them an adequate return and, therefore, they are modelling it to show that this price is not suitable for them, given the return that they want to achieve."*

280. The documents show that Warburg Pincus was analysing whether the equity investment generated sufficient returns and that from their perspective $56 already strained their returns. I accept Professor Fischel's evidence that this modelling is consistent with them trying to assess whether $56 produced acceptable returns. It cannot be relied on to show that a price of $56 had already been pre-determined or agreed.

281. In my view, the Dissenters' contention that the price was pre-determined depends upon an inference of undisclosed coordination between bidders, in the face of sworn evidence to the opposite effect and in the absence of any documentary support.

282. The inference for which the Dissenters contend is inconsistent with the independent evidence of price formation which emerged from Mr Jiang's account of Ocean Link's opening bid. I have already found Mr Jiang to be a credible witness, and I accept his evidence that he formulated that proposal independently, without coordination with Warburg Pincus, General Atlantic, or any other potential bidder, or any discussion with Mr Yao as to price. There is no contemporaneous material which contradicts this account and no objective reason to dismiss it.

283. The initial proposal was a non-binding offer of $55 per ADS. Mr Jiang said that Ocean Link's proposal was derived independently using historical share prices and adding a premium to make the bid attractive. He expressly stated that he did not discuss it with anybody as he did not want *"to run the risk of leakage"* [26] though General Atlantic would have been aware as he told his investment committee, a member of which was from General Atlantic.

284. He was clear that no one, including Mr Hsu or Mr Yao, told Ocean Link that the merger price should be $56, and that Ocean Link in fact regarded $55 as *"already high"* given that the Company's share price was trading at a premium compared to its comparable companies. He also gave evidence of the negotiations for a price increase which Ocean Link and General Atlantic resisted because the Company's stock price had not recovered

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[26] Day 9, page 67, lines 6,7

at the same rate as other internet companies in the Index. This evidence is inconsistent with the suggestion that Mr Yao fixed or anchored the price in March 2020 and instead supports the conclusion that the emerging pricing was shaped by independent buyer-side valuation work and the constraints under which the financial sponsors were operating.

285. In my view, once Mr Jiang's evidence is accepted - and I do accept it - the coincidence that the price eventually agreed was $56 per ADS does not give rise to a necessary inference that the price was pre-determined. It is certainly not beyond coincidence, given the price at which the shares were trading, that the bid prices proposed in the Warburg Pincus materials and by Ocean link were within the same range.

286. It was not, in any event, suggested to Mr Jiang that Ocean Link's bid was coordinated with other members of the buyer group or that the transaction price had been fixed at $56. Both propositions would have been unsustainable in light of Mr Julian Cheng's s.1782 deposition evidence that Warburg wanted to lead the transaction if there was one and were surprised when Ocean Link made the offer. Rather, the focus of the questioning was instead on buyer-side incentives namely, that Ocean Link, as a financial sponsor, was economically motivated to acquire the Company at the lowest price consistent with securing the transaction. That proposition was unsurprising and was not in dispute. It does not, however, support an inference that the transaction price was fixed or pre-determined, still less that Mr Yao anchored the price in advance.

287. Another criticism of the process concerned the composition and operation of the Special Committee. The Dissenters contended that its members were hand-picked, inexperienced, and maintained close ties to the buyer group, and that the Special Committee deferred to Mr Hsu and the buyer group on key issues, including the choice of advisers, the implication being not that the advisers lacked competence, but that they were favoured by management and the buyer group and therefore insufficiently independent.

288. I accept that the Special Committee engaged with Mr Hsu to a significant degree. There is force in the criticism, advanced by the Dissenters and reflected in the evidence, that a *"backchannel"* developed between Ms Dong and Mr Hsu through which management would have been able to exert influence on the Special Committee outside the formal negotiation structure. There were frequent communications between Mr Hsu and Ms Dong, early discussions of price sensitivities, discussions of incentives of rollover shareholders and statements by Mr Hsu that sound authoritative. Viewed in isolation, those communications might give the impression that the Special Committee was not acting independently.

289. Ms Dong, however, gave clear evidence that she approached Mr Hsu during a period of genuine disagreement within the Special Committee about the selection of legal advisers and did so to understand what pressures the Special Committee might face, drawing on her extensive prior experience in take-private transactions. She disagreed that Mr Hsu or Mr Yao had persuaded her to use Fenwick. She said that from her prior experience in a difficult take-private, she had formed the view that securing robust and experienced counsel was essential for the Special Committee to discharge its duties effectively and that Fenwick was a better choice than Mr Dodds' preferred candidate.

290. She also stated that she knew Mr Hsu well and understood his personality and regarded him as prone to self-promotion and that she consciously discounted his statements. I consider that the communications reflect informal, agenda-driven advocacy by Mr Hsu, rather than a coordinated effort to ensure the take private by the buyer group at a price preferred by Mr Yao.

291. Ms Dong was, by her own account, an independently wealthy professional who had participated in hundreds of transactions during a 30-year career at senior levels, including acting as CFO through an IPO, a complex take-private, and subsequent acquisition engagements. She said,

> *"I earned my reputation in the industry through the job I done, not through the particular relationship with certain type of people. So I didn't think the statement is fair for me considering all the hard work I done so many years to earn my professional reputation"* and also said,
>
> *"I strongly against the statement that I will [not] be independent in 58 case because do something in favour of Warburg Pincus."*[27]

292. As I understood her evidence, she was rejecting the idea that she would jeopardize her reputation for a single transaction. I accept that. I will say further that I consider that Ms Dong gave clear, consistent, and detailed explanations for her communications with Mr Hsu. She was candid about the limits of her recollection and readily acknowledged that Mr Dodds objected to her speaking to Mr Hsu. She maintained that nothing confidential - as she and Dodds understood that term - was ever shared after that. Taken as a whole, I consider her conduct to be consistent with a director seeking to perform her role diligently in a complex transaction, and not with a Special Committee whose independence was

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[27] Day 6 page 81 between lines 10 and 19

subordinated to management or the buyer group, notwithstanding the tone and content of some of the exchanges with Mr Hsu.

293. There is also no evidence that decisions were taken in conjunction with management, or that management attended Special Committee meetings during confidential deliberations. The structure of the meetings, as confirmed by independent evidence from advisers including Mr O'Donnell of Houlihan Lokey, was that management and advisers attended for limited purposes and withdrew when the Special Committee discussed confidential matters. This practice is reflected in the meeting minutes and was not challenged in the evidence.

294. I am not persuaded that the communications that took place between Mr Hsu and the Special Committee resulted in any decision being taken at the direction of management or the buyer group, or that the Special Committee's independence was compromised in substance.

295. The Dissenters also make the point that an intensive market check was only possible if Mr Yao was willing to support another consortium and the view of the Special Committee and their advisers were that he was not. They relied on an exchange between Fenwick and the Special Committee to highlight the issue. In the email exchange, Ms Dong asks Fenwick,

> *"@Ken Myers In what scenario do you envisage an intensive market check will happen?"*

to which Fenwick replied:

> *"Lily- it's rather hypothetical. It would only happen if Michael agreed to throw in with another consortium. That won't happen - I expect that in his agreement with the consortium he will agree to some exclusivity with them."*

296. The suggestion was that the deal process was in fact constrained by Mr Yao's decision to align himself with a particular buyer group which effectively excluded the possibility of another bidder coming forward.

297. The Dissenters also submitted that the Special Committee made a decision to not actively solicit competing bids. They relied on Dragoneer's expression of interest as illustrating that a competitive process was never intended and the Special Committee was not open to alternative offers. They also sought to suggest that there was a *"feeding frenzy"* among PE firms who wanted to get in on the deal which could have spiralled into a bidding war which the Special Committee could have used to negotiate.

298. Having considered the evidence, I do not consider the failure of the Special Committee to approach Dragoneer to be either a major flaw in the process or evidence that the process was never meant to be competitive. For a start, I accept Mr Dodds' evidence that Dragoneer did not have the financial capacity or investment profile to lead a transaction of this scale and that it was a portfolio investor - a follower - interested in participating alongside others not in leading or competing at a higher price. His evidence echoed what Mr Yao said when he received the outreach from Dragoneer's principal:

> *"He expressed interest in participating in the transaction but whether he wanted to participate in the transaction independently or wanted to be part of the buyer group, I wouldn't know, so that's why I forward—I forwarded this email to the independent committee."*
>
> *"If we look at the full content of the email, that guy said he would contact GA ...So Dragoneer is a hedge fund. It's not like Warburg Pincus or Ocean Link."*[28]

299. In my view, any *"feeding frenzy"* demonstrated by the evidence only showed that there was a strong appetite to participate in the deal at $55/56. There is no evidence to suggest that another buyer group with both the capacity and appetite to take the Company private was likely to offer a price in excess of $56. Even if I were inclined to accept that Mr Yao was unwilling to align himself with any alternative buyer group, the absence of any credible higher bidder, notwithstanding the extensive publicity surrounding the take-private, suggests that the constraint was structural rather than a product of the deal process. I also accept Mr Jiang's evidence that the public disclosure would have been likely to bring forward any potential topping bidders or competing participants, as it did when Ocean Link joined the Ehi take-private, and also accept that Ocean Link approached those firms it regarded as the most likely candidates when it was trying to put the consortium together.

300. I note here too that the transaction was of very considerable scale - the largest of its kind at the relevant time - undertaken during a period of extraordinary market uncertainty. Mr Dodds made the point in his evidence where he said that this was an $8 billion plus deal, one of the largest M&A deals in the PRC in years, and that there was going to be very limited numbers of potential buyers, while fairly acknowledging that Mr Yao's controlling shareholding was going to be an additional challenge for any potential buyer. Mr

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[28] Day 8, page 102 line 24 et seq

O'Donnell likewise pointed out that the pool of entities capable of leading a multi-billion dollar take private of a Chinese tech platform was exceptionally limited.

301. It follows that I do not accept that the Special Committee's failure to open discussions with Dragoneer, or ask them to submit a bid, demonstrates that the process was never intended to be open. I accept Mr Dodds' characterization of Dragoneer as a follower. I also accept his evidence (though offered late) that soliciting an offer from Dragoneer was unlikely to succeed and could risk destabilizing the buyer consortium. The evidence does not support an inference that a higher bid was foregone. Mr Yao declared himself open to offers and wanting a higher price.

302. The Dissenters argue that the process was rushed and that the compressed timetable limited the Special Committees' ability to seek alternatives or negotiate effectively. Again, while the process was objectively compressed, there is no evidence that it impaired the Special Committee's ability to seek alternatives or negotiate effectively. Rather, the evidence shows that the Special Committee had already determined that reaching out to third parties would be very unlikely to produce a competing bid.

303. The Dissenters also argued that the management projections were hastily prepared, were influenced by Mr Hsu's firm and, critically, were *"ignored"* by the buyer group. They relied in particular on General Atlantic's remark that the projections were *"more for legal purposes"* to argue that neither side treated the projections as a reliable indicator of intrinsic value. In their submission, this demonstrated that the merger price was not shaped by informed valuation analysis, but by the buyer group's IRR constraints and the bargaining dynamics.

304. I do not accept that the evidence supports the inference advanced by the Dissenters. While the sponsors' IRR constraints necessarily influenced the maximum price they were willing to pay, that does not mean that valuation materials, including the management projections, were ignored or played no role in price formation. Rather, the evidence shows that those materials were considered in assessing whether the proposed price was economically acceptable within the constraints of a limited buyer universe. The existence of such constraints does not, without more, demonstrate that the transaction price was uninformed or unreliable as an indicator of fair value.

305. The documentary record and cross-examination established that at $56 the buyer group, particularly Warburg Pincus, was already at what they considered to be the boundary of acceptable returns. Increases above $55 had been resisted on IRR grounds. The fairness materials placed before the Special Committee (the HL football-field) show that $56 fell within Houlihan Lokey 's DCF range on 15 June, though it was near the low end, once the

arithmetic correction was made. Taken together, these points are consistent with a real negotiation that resulted in a price the sponsors viewed as stretched, not with a price "fixed" by management or suppressed by a foregone alternative bid.

306. The Dissenters raised the issue of Houlihan Lokey's independence relying, in part, on the fact that the agreed price of $56 fell towards the lower end of Houlihan Lokey's DCF range as presented to the Special Committee on 15 June, and on Professor Yilmaz's contention that, if certain alleged errors were corrected, the price would fall below the lowest end of that range. The implicit suggestion was that Houlihan Lokey was prepared to issue a fairness opinion at a price that undervalued the Company, thereby evidencing a lack of independence or an outcome driven approach which aligned with management.

307. An adviser engaged to support a predetermined price would be expected to frame its analysis so that the agreed consideration sat more comfortably within the valuation range, or at least not to characterise it internally as low. Houlihan Lokey's internal materials, however, expressly recognised that the price lay at the lower end of the range and record efforts to assist the Special Committee in negotiating an increase.

308. I also take into account the economic position of the Company's directors and executive officers at the time the transaction was approved. With the exception of Mr Yao, they held vested options and restricted stock units whose value was directly linked to the merger consideration. Acting with full knowledge of those arrangements, the Special Committee unanimously recommended, and the Board unanimously approved, the transaction following receipt of Houlihan Lokey's financial analysis and fairness opinion. While this does not establish that the merger price represented intrinsic value in any absolute sense, it is inconsistent with the suggestion that the Board or Special Committee believed the Company was being sold at a materially suppressed price, or that there was coordination at Board or Special Committee level to that effect.

309. Drawing these strands together, I am not persuaded that the defects identified by the Dissenters, whether taken individually or cumulatively, demonstrate that the transaction price was the product of a flawed and unreliable process.

310. The evidence does not support the contention that the merger consideration was pre-determined or anchored by Mr Yao at an early stage, and that the subsequent deal process, including the appointment of the Special Committee and the engagement of advisers, was undertaken merely for show in a transaction whose outcome was pre-ordained. Rather, the contemporaneous materials, the evidence of the participants, and the economic analysis all point to a process in which price formation was driven by

the interaction between an independent initial proposal, subsequent negotiation, and the return constraints of a limited pool of credible financial sponsors.

311. While the process was not without imperfections, including the development of informal lines of communication between Mr Hsu and members of the Special Committee and the absence of a broader market canvass, I am not satisfied that those features operated to distort the price ultimately agreed or to deprive the Special Committee of its ability to act independently in substance. Nor does the absence of a competing bid, in the circumstances of this transaction, support an inference that a higher price was foregone.

312. It is also material that the Special Committee was not operating under any structural compulsion to accept an underpriced offer. It had the authority to reject the transaction if it concluded that the price was inadequate and exercised that authority in practice. It declined to accept $55 notwithstanding Houlihan Lokey's advice that the price lay within the fair value range. It rejected $55.30 as inadequate and continued to press for further movement despite buyer-side resistance and explicit threats to walk away. Those steps are inconsistent with a special committee whose role was merely formal or whose outcome was pre-ordained.

313. Mr Yao's shareholding meant that no take-private transaction could proceed without his support. That was a factual reality of the Company's ownership structure. Having heard from him and considered his evidence, however, I am satisfied and find that he had not fixed the price at which he was prepared to proceed, that he was open to a higher offer and that he was willing in principle to work with any alternative buyer capable of executing a transaction of this scale. There is no evidence that any such buyer was excluded or discouraged. The absence of any credible higher bid from a party with the requisite financial capacity, notwithstanding that the proposed take-private was known to potential financial sponsors, supports the conclusion that the transaction price reflected the economics of the deal and the limits of the available buyer universe, rather than exclusion or manipulation.

314. Given my findings, it follows that I reject the Dissenters' submission that the merger price should be accorded no weight. I am satisfied and find that the transaction price emerged from genuine negotiation between sophisticated parties operating within identifiable economic constraints and that it provides a reliable indicator of value to which I should attach considerable weight.

315. I now turn to a consideration of the expert valuation evidence.

EXPERT VALUATION EVIDENCE

316. Professor Fischel advanced two propositions. The first was that the Company's ADS traded in a semi-strong efficient market, so that the adjusted trading price were informative of value. The second is that the DCF analysis he conducted produced results broadly consistent with the market indications that his AMTP analysis produced.

317. I take each valuation methodology in turn, beginning with his evidence on the AMTP and Professor Yilmaz's critique of his AMTP analysis.

Adjusted Market Trading Price

318. Professor Fischel presented the AMTP as a roll-forward of the Company's pre-announcement trading price, adjusted for market, industry and firm-specific factors to estimate the value that would have prevailed at the valuation date in the absence of the merger.

319. This method of valuation infers value from the price at which the company's securities are traded in the open market prior to the merger announcement. The method depends on the proposition that the Company's ADS traded in a semi-strong efficient market in which all publicly available information was rapidly reflected in the price.[29] Professor Fischel's reliance on adjusted market prices was a principal area of disagreement between the experts. Professor Yilmaz discounted Professor Fischel's AMTP on the ground that the market was not efficient, that there was material non-public information ("MNPI") that could have had significant impact on the market price[30] and that the trading price at the date chosen by Professor Fischel to conduct his analysis was affected by the announcement of the offer on 2 April.

Market Efficiency

The *Cammer* Factors

320. Professor Fischel's principal submission was that the Company's ADSs traded in a market that was sufficiently liquid, informed, and responsive to public information such that both the pre-announcement trading price and the AMTP derived from it provided a meaningful indication of fair value.

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[29] See Kawaley J in Nord.Anglia

[30] See para 3.2.5 of the Joint memorandum

321. In support of that submission, he relied first on the fact that the Company's ADSs traded on the New York Stock Exchange. He said that, in the academic and legal materials cited in his report, listing on the NYSE is commonly treated as giving rise to a rebuttable presumption of an efficient market, subject to rebuttal where the particular security is thinly traded or demonstrably unresponsive to new information.

322. He also referred to the presence of what he called *Cammer*[31] factors as a way of assessing whether the market for the Company's ADSs was sufficiently informed, liquid and responsive to public information for trading prices to be probative. He acknowledged that, in academic terms, only analyst coverage and price responsiveness go directly to semi-strong efficiency, whereas the remaining factors are more properly understood as indicators of whether the market is "open and developed." He maintained, however, that those *"contextual"* factors remain relevant in assessing whether the market for the Company's ADSs was sufficiently deep and well-informed for trading prices to be probative. I set out the factors below.

323. *Cammer Factor 1 : Average Weekly Trading Volume*: As to the existence of an actively traded market, Professor Fischel reported that, 'the average weekly trading volume during the period from 2 April 2018 to 1 April 2020 was 4.49% of the ADSs outstanding, which substantially exceeds the two percent level that an authority cited favourably by the *Cammer* court stated, *"would justify a strong presumption"* that *"the market for a security is an efficient one."*[32] He also relied on the average weekly dollar value of trading of the ADSs during the same period of approximately $299.5 million, as indicative of *"significant investor interest"* [33] in the Company, and therefore a likelihood that market participants were trading on the basis of newly available or disseminated information. He treated institutional participation as reinforcing those indicators of market depth. He pointed to evidence that more than 80% of the outstanding ADSs were held by institutional investors and that 365 institutional investors held, bought or sold ADSs during the four quarters before the announcement of the Original Proposal.

324. *Cammer Factor 2: Analyst Coverage*: Professor Fischel also relied on the extent of analyst coverage. He identified at least 21 brokerage firms following and reporting on the Company. He treated this as relevant to information dissemination and the speed with which public disclosures would be analysed and reflected in market expectations.

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[31] From the case of Cammer v Bloom 711 F. Supp. 1264 (D.N.J. 1989)

[32] Ibid.para13

[33] Appendix C para 13

325. *Cammer Factor 3: Market Makers and Arbitrageurs:* He further relied on evidence of market-maker participation, stating that 71 different market makers traded the ADSs during the two years before the announcement of the Original Proposal. He also pointed to a narrow average closing bid-ask spread of approximately $0.02 over the two-year period ending 1 April 2020, which he treated as consistent with a deep and liquid market with relatively low transaction costs.

326. *Cammer Factor 4: The Company's eligibility to file an SEC Form S-3 Registration Statement:* Professor Fischel referred to the Company's eligibility to use the SEC's streamlined registration form (in his report, the equivalent "F-3" eligibility is addressed in the same cluster of factors), treating this as a structural marker of a mature issuer operating in a market environment where information flow and investor following are typically well developed.

327. *Cammer Factor 5: The cause and effect relationship between corporate events or financial releases and the stock price*: With respect to the Cammer factor 5, his evidence was that there was a cause and effect relationship between disclosures and price reactions to those disclosures which is the essence of an efficient market.

Event Studies

328. The central way to establish *Cammer* factor 5 is to conduct an event study [34] which is designed to examine market reactions to and excess returns around specific information events. The information events can be market wide, such as macroeconomic announcements, or firm-specific, such as earnings or dividend announcements.

329. Professor Fischel was examined and cross-examined at length on his event study. I do not intend to rehearse the evidence in detail, but to highlight only so much of it as necessary to explain the view I have taken with respect to the AMTP proposed by Professor Fischel.

330. His event study of the Company's ADSs was done using a one-factor model using the Market Index as the independent variable to analyse whether the price of the ADSs reacted to new value-relevant information quickly during the five-year period from 1 January 2015 to 31 December 2019. It was intended to demonstrate that, over a long historical period, the Company's ADSs exhibited statistically significant residual returns on "news days", which was far more than would be expected by chance alone, thereby

[34] Exhibit C-1 Event Study of News Day 2015 -2019. Discussion at Appendix C.

showing that the stock generally reacted promptly to firm-specific information and supporting the conclusion that the Company traded in a semi-strong efficient market.

331. Professor Fischel's evidence was that at a 5% level of confidence, using a one-tail model, he identified 14 occasions out of 49 events when the market moved in statistically significant ways in response to news. He explained that if prices were not responsive to firm-specific disclosures, statistically significant residual returns on "news days" would be expected only at the rate dictated by chance. The fact that he observed a materially higher incidence over the five-year period was, in his view, consistent with the hypothesis that the market price incorporated public information promptly.

332. In response to criticism by Professor Yilmaz that his event study stopped in 2019 and couldn't prove market efficiency in 2020, Professor Fischel examined the market reaction to two major firm-specific announcements in that year - the receipt of the Original Proposal on 2 April 2020 and the announcement of the Merger Agreement on 15 June 2020 - and relied on the immediacy and magnitude of the price movements on those dates as consistent with market responsiveness to value-relevant public information.[35] In his Report he stated:

> *"The price of the ADSs also reacted to certain acquisition-related events in 2020. In particular, on April 2, 2020, the day the Company issued a press release announcing that its Board had received the Original Proposal from Ocean Link, the price of the ADSs increased by 12.98% from the previous day's close of $46.70 to close at $52.76. Moreover, on June 15, 2020, the day the Company announced that it had entered into the Merger Agreement, that would provide consideration of $56.00 in cash to ADS holders if the Merger were consummated, the price of the ADSs increased by 9.55% to close at $54.58."* [36]

333. Professor Fischel also conducted an event study using both the Market Index and the Industry Index as independent variables (i.e., a two-factor model) and maintained that he obtained qualitatively similar results.

334. As an additional test of whether the price of the ADSs systematically reacted to the release of the new value-relevant information, Professor Fischel compared the volatility of

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[35] Exhibit 13 D1/392

[36] Professor Fischel Expert Report paragraph 9

residual returns on "news days" with the volatility of residual returns on other days.[37] He stated that the volatility of residual returns on "news days" was significantly greater than the volatility of residual returns on other days and that his findings support the hypothesis that the market for the ADSs was efficient.

335. He was cross-examined at length on his event study by Mr Adkin who suggested that the selection of days was skewed towards generating statistically significant returns and was therefore *"logically flawed."* Professor Fischel accepted that the "news day" sample was not random but explained that this was inherent in the design of an event study, which is directed to dates on which firm-specific information is disclosed and on which, if the market is responsive, a price effect is more likely to be detected. It was a feature, not a flaw, of the methodology, as event studies are designed to isolate such days.

336. The following response encapsulates Professor Fischel oral testimony on the point:

> *"It's not a random sample but **at the 5% level with 49 observations**, what you would expect by chance alone is two statistically significant results, and what's observed here is not two statistically significant results but 14 statistically significant results, and while that number, 14 versus two, might be a function of what you say quite correctly, that the sample is chosen in a non - random way with respect to a particular set of days, that result, given the conventional way that this study is performed, is consistent and supportive of market efficiency, particularly in connection with the rest of the discussion, which you are not including, about the presumption that stocks traded on the New York Stock Exchange are traded in a semi - strong efficient market, that the stock was followed by over 20 analysts, that it was 80% owned by institutional investors, that the other - there is also a reason for ... the non - randomness test that's also described in my report, that you are not referring to, namely one of the ways to test for an efficient market is whether stock price reactions on news days are more volatile than stock price reactions on non-news days.*
>
> *That's also discussed in my report and why the selection of news days is - it's not a random sample but **there is a reason why it's not a random sample**. So I agree with everything that you said about it's not a random sample, more likely to produce statistically significant returns than a*

[37] Exhibit C-2

completely random sample, but I don't agree with your ultimate conclusion for the reasons that I stated." [38]

337. Professor Fischel also disagreed with the proposition put to him by Mr Adkin that, in determining whether the response to news was reflective of a semi-strong efficient market, one had to decide whether the news was bad, good or no news in order to determine whether the market had moved in the *"right"* direction.

338. Challenged by Mr Adkin that his event study did not show statistically significant price reactions, *in the expected direction,* to a number of earnings and revenue announcements, Professor Fischel rejected the premise that semi-strong efficiency requires immediate, statistically significant, or directionally correct price reactions to every item of publicly available information. In his *viva voce* testimony he said,

> *"... there is no reliable relationship between surprises and stock price reactions, where you can know in advance if there is an earnings surprise or a revenue surprise or both an earnings surprise and a revenue surprise that you can predict that stock prices will behave in a certain way without taking into account all of the relevant information that's disclosed. But I also provide in my report a statistical analysis, which shows that, on average, there is a relationship between surprises and stock price movements but that's on average. In any particular case, there may very well be a divergence between a surprise and the price reaction for exactly the reasons that ... the surprise is part of a bundle of information that's disclosed and .. in looking at the market reaction, you have to consider all the information that's disclosed, not just the surprise."* [39]

339. He also contended that a failure to identify a statistically significant abnormal return on a particular announcement date did not establish that the market failed to incorporate the information contained in that announcement, and did not, of itself, demonstrate market inefficiency. In his Report, he noted academic authority for this proposition:

> *"...while a statistically significant reaction to a firm-specific news event is evidence that information was reflected in the price (absent confounding effects), the converse is not true—the failure of the price to react so extremely as to be two standard deviations from average does not*

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[38] Transcript Day 11 page 27-29

[39] Transcript Day 11, page 16-17

establish that the market is inefficient; it may mean only that the correctly-sized value impact that occurred was less than 1.96 standard deviations from the mean."[40]

340. The roll forward was conducted from 12 June. In his Report, Professor Fischel identified two relevant pre-transaction trading prices. He treated the closing price on 1 April 2020, the last trading day before announcement of the Original Proposal, as an "Unaffected Price" reflecting all publicly disclosed information at that time. He also identified the closing price on 12 June 2020, the last trading day before announcement of the Merger Agreement, as the "Pre-Announcement Price", and treated it as reflecting all publicly disclosed information prior to that announcement.

341. He then adjusted the Pre-Announcement Price for changes in market, industry and firm-specific conditions between 12 June 2020 and the valuation date, deriving an adjusted range of $25.63 to $27.21 per Class A Share.

342. He considered that the Pre-Announcement Price likely reflected some anticipation of an acquisition at a premium and therefore likely overstated fair value. He illustrated this by reference to a probability-weighted example, showing that the implied standalone value would be lower than the observed trading price.

343. I turn next to Professor Yilmaz's criticisms of the AMTP, beginning with his challenge to the selection of 12 June 2020 as the starting point.

Critique of Professor Fischel's AMTP by Professor Yilmaz

The *Cammer* Factors

344. Taken to the to the *Cammer* factors in cross-examination by Mr Boulton KC, Professor Yilmaz accepted that the Company's ADS were actively traded and that there was a correlation between illiquidity and efficiency [41] but stated he would still check efficiency with an event study:

"Q....there were 42,000 ADS trades per week ... on average, $300 million of ADSs are trading. You would accept that that at least means that the data we're getting from market prices is based on a significant volume of trading?

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[40] Professor Fischel Supplemental Report Footnote 36.

[41] Transcript Day 18 page 3

A. It's not bad, but obviously one has to - I mean, again, I don't rely on these things in terms of establishing efficiency. Neither Professor Fischel does. I don't know if any scientific financial economics research suggests this... Neither of us rely on it."[42]

345. Professor Yilmaz also accepted that 80% of the ADSs were held by institutional investors numbering 365 but did not agree that this implied informed trading. He explained that many such investors would typically mimic the index. He considered that only a relatively small subset of market participants, *"stock pickers,"*[43] could be expected to trade strategically.

346. He also said he did not consider the *Cammer* factors to be *"a first order thing"* and did not respond to them in his Report because they did not *"deserve space"* given that the only acceptable indicia of market efficiency was price response. [44]

Flawed Event Study

347. It was Professor Yilmaz's evidence that a proper event study requires examining whether *positive earnings or revenue surprises are followed by positive abnormal returns*, and *negative surprises by negative abnormal returns*. He criticised Professor Fischel's event study on the basis that it treated any statistically significant price movement as supportive of market efficiency, even where the share price moved in what should be regarded as the "wrong" direction relative to the earnings surprise. In Professor Yilmaz's view, this approach was contrary to accepted event-study methodology which treats the *direction* of the market's response as central to interpretation. [45]

348. Professor Yilmaz emphasised that it was not enough that a share price moved in response to news. The price must move in the expected direction, and the magnitude of the movement must be economically meaningful, not merely statistically detectable. His own assessment of Professor Fischel's event study showed that a substantial number of earnings and revenue announcements produced no statistically significant price reaction and that, where reactions were statistically significant, the price sometimes moved in

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[42] Transcript Day 18 pages 3-4

[43] Ibid.p 5

[44] Ibid pages 5-6

[45] See Mackinlay: »If.the.earnings.disclosures.have.information.content?higher.than.expected.earnings.should.be.associated.with.increases.in.value.of.the.equity.and.lower.than.expected.earnings.with.decreases."

what he characterised as the "wrong direction" relative to the earnings or revenue surprise.

349. He also criticised Professor Fischel for treating the identification of statistically significant abnormal returns as sufficient, without examining whether the magnitude of those returns was economically meaningful or indicative of correct price formation. In his view, statistical significance alone did not demonstrate that the market had properly incorporated the value-relevant information.

350. Referencing his own event study, Professor Yilmaz said this:

> *"I only consider the event dates on which the **surprise was significant** using the industry standard Standardized Unexpected Earnings ("SUE") Score. This analysis shows that for the majority of significant earnings surprises, the market price **fails to react significantly and in the right direction**. Clearly, if the market price incorporated all value-relevant information, we would observe a significant price reaction in the expected direction on **substantially all** of these significant surprises. Considering that the market price does not react significantly in the majority of the cases, the market for 58.com's stock is far from efficient."* [46]

351. In response to Mr Boulton in cross-examination, Professor Yilmaz accepted that when the news is mixed, the precision of event-study testing is reduced. [47] However, when taken to an announcement involving a positive earnings surprise alongside a projected COVID-related revenue decline, he did not accept that the news was mixed. In his words, the market already knew *"COVID was coming"* and the earnings announcement was the only *"surprise"* or unexpected news. [48] In his view, the relevant question was therefore whether the share price responded to the earnings surprise relative to analysts' expectations.

352. Professor Yilmaz also criticised Professor Fischel's statistical testing choices. He took issue with Professor Fischel's use of a one-tailed test at a 90% significance level, rather than a two-tailed test at the more conventional 95% level, which he said materially overstated the evidential support for market efficiency by increasing the number of "significant" reactions. Although Professor Fischel described the one-tailed test as examining whether residual returns were significantly different from zero in a particular direction, Professor

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[46] Yilmaz Supplemental paragraph 69

[47] Transcript Day 18 page 10

[48] Ibid page 12

Yilmaz maintained that Professor Fischel did not test whether *the direction* of the price response was consistent with the nature of the earnings surprise.[49]

353. A further criticism advanced by Professor Yilmaz concerned Professor Fischel's use of a single-day event window. In his view, focusing only on same-day reactions risked missing delayed market responses to earnings announcements, thereby understating the extent to which prices failed to respond appropriately to new information.

354. In his own event study, Professor Yilmaz employed multiple event windows, including 2-, 5-, and 20-day windows surrounding earnings and revenue announcements.[50] He said that this analysis showed statistically significant price reactions in the expected direction for fewer than half of the earnings or revenue surprises examined. Where there was no significant same-day reaction, he examined cumulative residual returns over subsequent trading days in order to test for delayed responses.

355. He identified a number of cases in which positive earnings news was followed by weak or wrong-direction reactions on the announcement date, but statistically significant cumulative abnormal returns in the days that followed. He characterised this pattern as post-earnings drift, inconsistent with semi-strong form market efficiency. Taken together, he maintained that his event-study results showed that the market for the Company's ADS did not respond to value-relevant earnings information in a timely and directionally correct manner during the period surrounding the valuation date, and therefore did not exhibit semi-strong form efficiency.

Wrong Date

356. Building on that conclusion, Professor Yilmaz criticised Professor Fischel's reliance on 12 June 2020 as the starting point for the AMTP on the basis that Professor Fischel had not demonstrated that the market for the Company's ADS was semi-strong efficient at that date. He emphasised that the AMTP requires an "unaffected" starting price that reflects all publicly available information, and that this presupposes market efficiency at the relevant date.

357. In Professor Yilmaz's view, Professor Fischel's efficiency analysis did not satisfy that requirement because it ended on 31 December 2019. Evidence that the market may have been efficient prior to that date could not, in his view, establish that the market continued

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[49] Yilmaz Report Footnote 94

[50] Ibid Professor Yilmaz's model at Table X-1 and discussed at paragraphs 287-293

to operate in a semi-strong efficient manner during the period leading up to June 2020, a period characterised by extreme volatility and disruption arising from COVID-19.

358. Drawing on his own event-study analysis of the period after January 2020 and before June 2020, Professor Yilmaz said that the market repeatedly failed to incorporate value-relevant earnings and revenue information in a timely and directionally correct manner. By way of example, he referred to the announcement of the Company's FY2019 results in March 2020, which involved a large positive earnings surprise but was followed, in his view, by no statistically significant price reaction. He regarded this as indicative of market inefficiency during the period relevant to the AMTP starting price.

359. Separately, and independently of his criticism of Professor Fischel's efficiency analysis, Professor Yilmaz advanced a more pointed objection to the use of any post-April 2020 trading price as the starting point for an AMTP. His evidence was that, once the Original Proposal was announced on 2 April 2020, it anchored the trading price which could no longer reflect standalone fair value.

360. In his Reports and responsive exhibits, Professor Yilmaz posited that, following the announcement of the offer, the market price primarily reflected a probability-weighted assessment of two outcomes: the probability that the proposed transaction would proceed at approximately $55 per ADS, and the probability that the buyer group would abandon the transaction, in which case the share price would fall materially. On that basis, any intrinsic value of the Company above $55 would not be reflected in the trading price, because shareholders would receive $55 if the deal completed regardless of how high that intrinsic value might be.

361. Professor Yilmaz's view was that, regardless of whether the market was efficient or inefficient, the Company's trading price at any point after 1 April 2020 was structurally incapable of reflecting standalone fair value. On that basis, he regarded it as inappropriate to use 12 June 2020 - or any other post-offer date - as the starting point for a carry-forward analysis, because the price at that date was already divorced from fundamental value by the existence of the offer itself.

MNPI

362. Professor Yilmaz identified several categories of information which, he said, were known to management and to the buyer group during the period from April to September 2020 but not to the public market, and which were, in his opinion, material to any assessment of the Company's intrinsic value and therefore constituted MNPI.

363. He relied in particular on the Company's first-quarter 2020 financial results. He said that management and the Board knew by mid-March 2020 that Q1 revenue was materially ahead of the guidance previously given to the market, and that actual Q1 revenue ultimately exceeded that guidance by about 16%. The results were not disclosed publicly until 26 June 2020. In his view, disclosure of that information at an earlier stage would likely have had a positive effect on the share price. He drew a comparison with the Company's second-largest revenue outperformance, announced in August 2017, which was followed by a sharp increase in the share price. By the time the Q1 2020 results were announced, however, the trading price was constrained by the management buyout offer, and there was little observable market reaction.

364. He also relied on an internal sum-of-the-parts valuation prepared by General Atlantic during the transaction process. He referred in particular to an analysis conducted shortly before the valuation date which placed the Company's value at about $96 per ADS. Given General Atlantic's position on the Board and its access to non-public information, he said that disclosure of such an analysis before the Announcement Date would have been taken by the market as a powerful signal of the Company's underlying value.

365. He also relied on non-public information relating to Zhuan Zhuan (ZZ), including internal communications as to revenue expectations and contemporaneous transaction evidence, in particular Zhuan Zhuan's acquisition of Zhaoliangi (ZLJ) which, in his view, indicated a valuation materially above that reflected in the Company's public disclosures.

366. His position was that, taken together, these strands of non-public information meant that the market was pricing the Company's shares without access to information that was material to value. On that basis, he concluded that the market trading price could not be relied upon as an indicator of fair value.

The Roll Forward

367. Professor Yilmaz criticised the regression-based roll-forward on the basis that it sought to predict the counterfactual price behaviour of a single company by applying relationships estimated over a pre-COVID period to a time of significant disruption. Although Professor Fischel's regression used market and industry indices, Professor Yilmaz emphasised that the exercise was attempting to infer the price path of an individual firm through a period of structural change. He also criticised the internal consistency of the analysis, pointing to the use of different market proxies in different parts of the report and to adjustments made to the industry index which materially affected the result. In his view, these choices showed that the outcome was highly sensitive to specification. He further criticised the company-specific adjustment applied after the regression-based

carry-forward, noting that the implied value was reduced by a downward adjustment based on the September Rolling Forecast. He regarded that forecast as unreliable, reflecting implausible and internally inconsistent assumptions and a consistently conservative bias when compared with subsequent actual performance. He also objected to the premise that short-term volatility or temporary operational disruption should be treated as having a permanent impact on the Company's prospects. On that basis, he concluded that the roll-forward could not be relied upon as a robust indicator of value.

Professor Fischel's Response

MNPI

368. Turning first to Professor Yilmaz's MNPI criticisms, Professor Fischel accepted in cross-examination that the revised management projections were not publicly disclosed and could possibly constitute MNPI. His evidence, however, was that they were not material in the sense required to undermine market price, because they were not shown to be likely to increase the trading price.

369. He compared the projections to analyst expectations and public guidance and expressed the view that their disclosure would not reasonably have been expected to increase the trading price and might, in context, have had no effect or could have moved the price in the opposite direction.

370. He accepted that certain operational information, including the ZZ communication, was not publicly disclosed and could potentially fall within MNPI. He considered, however, that the information was not quantified, was not incorporated into revised projections in a way capable of valuation and was not shown to be of such significance that its disclosure would reasonably have been expected to affect the trading price.

371. He rejected the treatment of buyer-side valuation analyses, including GA's internal valuation work, as MNPI for AMTP purposes. His evidence was that market prices in a semi-strong efficient market reflect publicly available information and do not assume incorporation of internal sponsor valuations or private diligence material. He maintained that treating such information as MNPI would require an assumption of market efficiency beyond that required for reliance on market price.

Event Study

372. Professor Fischel rejected Professor Yilmaz's critique of his event study which he described as fundamentally flawed. He stated that Professor Yilmaz's criticisms rested on theoretical objections that were either misplaced or unsupported by any empirical demonstration

and that his analysis was based on the Nirvana fallacy *"of comparing the imperfect to a nonexistent perfect and then concluding that the perfect is better."*[51]

373. With respect to Professor Yilmaz's contention that the event-study evidence failed to establish semi-strong form market efficiency because, on certain earnings announcement dates, the market did not react in a statistically significant manner or in what Professor Yilmaz characterised as the *"expected"* direction, Professor Fischel rejected the premise that every announcement of financial results that beats or misses consensus estimates should necessarily give rise to a statistically significant abnormal return.

374. He stated that the absence of a statistically significant residual return at conventional confidence levels on a particular event date does not establish market inefficiency, because the information released may not have warranted a price reaction of the magnitude assumed by Professor Yilmaz, or may already have been anticipated by the market. He emphasised that market efficiency does not require that prices always move sharply or detectably on announcement dates.[52] On that basis, Professor Fischel rejected Professor Yilmaz's premise that the absence of statistically significant, directionally "correct" price movements on individual announcement dates was sufficient to demonstrate market inefficiency.

375. He also stated that Professor Yilmaz's focus on abnormal returns ignored other objective evidence of market reaction. On the relevant earnings announcement dates relied upon by Professor Yilmaz, trading activity in the Company's ADSs increased markedly. As shown in Exhibit S-1 to his Supplemental Report, trading volume on those dates ranged from 1.0% to 15.0% of ADSs outstanding, with an average of 4.2%, compared to an average daily trading volume of approximately 1.5% over the broader period from 1 January 2015 to 1 April 2020. He notes that elevated trading volume is itself a recognised indicator that the market was actively processing new information, even where price movements were muted or not directionally clear.

376. In addition, Professor Fischel contended that analyst behaviour corroborated this conclusion. Exhibit S-2 showed that four or more equity analysts issued research reports on either the day of, or the first trading day following, each of the earnings announcements in question. He regarded the contemporaneous issuance of analyst

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[51] Professor Fischel Supplemental Report paragraph 11.

[52] Ibid. paragraph 16 footnote 36 "while a statistically significant reaction to a firm-specific news event is evidence that information was reflected in the price, the converse is not true"

reports as further evidence that the announcements were being scrutinised, interpreted, and incorporated into market expectations.

377. Professor Fischel challenged Professor Yilmaz's assumption that the *direction* of an earnings or revenue surprise provides a reliable benchmark against which market reactions should be judged. He stated that the academic literature undermined the validity of Professor Yilmaz's *"expected direction"* framework and stated that *contrarian* stock price reactions - where prices move in the opposite direction to an earnings surprise - are common and well-documented. He cited Johnson & Zhao (2012)[53], who found contrarian returns in approximately 40% of a large sample of quarterly earnings announcements, and demonstrated that such reactions do not subsequently reverse, indicating that they are not the product of mispricing but of rational information processing in the presence of noise and multiple information signals.

378. He asserted that Professor Yilmaz's own regression analysis contradicted his conclusions. Referring to Professor Yilmaz's event study, [54] he noted that when Professor Yilmaz included indicator or "dummy" variables for revenue surprises, earnings surprises, or deviations from management guidance in his two-factor event-study regressions, he found positive and statistically significant coefficients and yet Professor Yilmaz did not address results which, in his view, supported the conclusion that the market for the Company's shares was efficient.

379. Professor Fischel also addressed the instances in which price movements appeared to run counter to both revenue and earnings surprises. He noted there was only one such instance in Professor Yilmaz's data set: 21 August 2014. In that case, the Company had issued forward-looking revenue guidance that fell short of market expectations at the same time as it announced both the revenue surprise and the earnings surprise which, he suggested, explained the observed price decline, even though the Company's Q2 results *"beat"* expectations."[55] In Professor Fischel's view, this example illustrated the central flaw in Professor Yilmaz's model of *"expected direction"* as it ignored other information

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[53] Professor Fischel Supplemental Report at paragraph 17 and footnotes 37-39

[54] Ibid.paragraph 18 reproducing Yilmaz Table XI.F-4

[55] Fischel Supplemental Report at paragraph 19, footnote 44: "See.[redacted]com¿Q8.Beat?But.Slower.Growth?Rising. Competition¿Analysts.Downgrades, Dow Jones Institutional News, August 21, 2014 (›[redacted]com.reported. better_than.expected.second.quarter.earnings.• .[b]ut.[redacted]com's.management.guided.lower.sales.growth.for. the.third.quarter• ¡.In.addition?[redacted]com.now.has.a.viable.competitor¡.Ganji.recently.received.P866.million. investments.and.is.turning.aggressive.in.its.marketing.campaign¡'"

provided by the Company that the analysts considered to be important, including information about revenue by segment and anticipated margins.

380. He also addressed Professor Yilmaz's contention that, where no statistically significant abnormal return was observed on the announcement date itself, the market exhibited a *"delayed reaction"* in the days following the announcement, which would not be observed if the market for the Company's stock were efficient.

381. He rejected this analysis in its entirety, characterizing both the methodology employed and the inferences drawn from it as fundamentally flawed. He contended that Professor Yilmaz's analysis rested on an unproven assumption: namely, that statistically significant residual returns observed after the event date were causally attributable to the earnings announcement itself rather than other information including analyst reports issued on the days following the announcement or random price movements. Professor Fischel noted that Professor Yilmaz himself acknowledged elsewhere that, in a semi-strong efficient market, stock prices may change on any given day due to new value-relevant information or as a result of random price fluctuations.

382. Professor Fischel also observed that Professor Yilmaz offered no explanation why only some announcements allegedly exhibited delayed reactions, while others did not, nor why the duration of the reactions which were purportedly delayed varied arbitrarily from one to five trading days.

383. He analysed the internal consistency of Professor Yilmaz's own results and determined that the returns analysed by Professor Yilmaz did not show any consistent pattern, concluding that,

> *"The absence of any consistent pattern is further evidence that Professor Yilmaz's findings are an artifact of his methodology for identifying the purported delayed reactions, rather than reliable evidence of delayed reactions."*

384. Professor Fischel further explained that, by examining 20 different residual return measures following each event, Professor Yilmaz substantially increased the likelihood of identifying statistically significant results by chance alone. He noted that Professor Yilmaz himself had acknowledged this problem in a different context in his own report, recognising that extensive searching for statistical irregularities can lead to random outliers being misidentified as meaningful responses, in this instance, as significant delayed reactions.

385. Finally, Professor Fischel addressed the relevance of Professor Yilmaz's delayed-reaction analysis to the AMTP exercise. He observed that Professor Yilmaz did not identify any earnings or disclosure event occurring in the days immediately preceding 12 June 2020 that was not fully reflected in the trading price. Accordingly, even if one were to accept that delayed reactions occurred on certain historical earnings dates, that would not support the proposition that the pre-announcement price did *not* provide a reliable indication of value on 12 June 2020, let alone justify the conclusion that fair value was more than twice the pre-announcement ADS price.

The Submissions on the AMTP

386. The Company submits that the AMTP provides a reliable market-based proxy for fair value in this case. Its starting point is that, where a company's shares trade in a semi-strong efficient market, the trading price reflects all publicly available information and therefore constitutes a sound indicator of value, subject to appropriate adjustment to the valuation date.

387. The Company relies on Cayman authority, including *Trina Solar* and *Qunar*, as demonstrating that the Court may adopt an adjusted market trading price where the evidential preconditions are satisfied, and submits that the Court should assess the reliability of the AMTP before turning to alternative valuation methodologies such as DCF.

388. The Company frames the issues for determination as threefold:

(i) whether the market for the Company's ADSs was semi-strong efficient;
(ii) whether there existed material non-public information; and
(iii) what was the appropriate date for rolling forward the unaffected price to the valuation date.

389. On market efficiency, the Company submits that Professor Fischel's event-study evidence should be preferred. The Company argues that the absence of uniform or directionally "correct" price reactions to every disclosure does not negate efficiency, and that Professor Fischel's results demonstrate that prices generally incorporated public information in a timely manner. The Company also places weight on the *Cammer* factors - the high trading volume in the ADSs, substantial institutional ownership, and extensive analyst coverage - as favouring a finding of semi-strong efficiency.

390. On MNPI, the Company submits that Professor Yilmaz's analysis proceeds in the wrong order by treating MNPI as a threshold disqualifier of AMTP. It contends that the proper approach is first to determine market efficiency, and only then to consider whether any

identified non-public information was sufficiently material and price-accretive to undermine reliance on market price and urged the Court to accept Professor Fischel's conclusion that the MNPI did not establish that the market price understated value.

391. As to the valuation date and roll-forward, the Company invites the Court to reject the contention that the earlier non-binding offer announcement on 2 April 2020 "capped" the trading price thereafter on the basis of Professor Fischel's evidence that there was continued price volatility in the Company's shares following the April announcement, inconsistent with the price being anchored to the offer. The Company further submits that Professor Yilmaz's preference for an April start date is inconsistent with Cayman Islands' authority and would increase, rather than reduce, the speculative element of the roll-forward.

392. The Company also submits that Professor Yilmaz's own event-study results do not support his conclusion that the market for the Company's ADSs was inefficient and that his analysis treats the absence of a statistically significant same-day price reaction as evidence of inefficiency, even where there is no economically meaningful indication of mispricing. The Company contends that this approach conflates "no reaction" with a "wrong reaction" and applies an unduly exacting benchmark for market efficiency.

393. The Company submits further that Professor Yilmaz's reliance on longer event windows undermines his conclusions, because multi-day windows necessarily incorporate market-wide and macroeconomic influences, making it difficult to attribute subsequent price movements to firm-specific disclosures. In the Company's submission, Professor Yilmaz's insistence on directionally precise reactions assumes a level of informational clarity that is often absent in practice, particularly where disclosures are mixed, forward-looking, or substantially anticipated by the market, and therefore does not provide a sound basis for rejecting the AMTP.

394. The Dissenters submit that the AMTP should be rejected in its entirety. Their case is that, although market-based valuation methodologies may be appropriate in principle, the factual and informational conditions required for reliance on an adjusted trading price were not satisfied here.

395. The Dissenters contend that the take-private transaction was pursued during a period of exceptional market dislocation caused by the COVID-19 pandemic, and that the announcement of the non-binding offer on 2 April 2020 materially affected subsequent trading in the Company's ADSs. From that point onwards, they submit, the trading price did not recover in line with the broader market and sector rebound and could not be treated as a reliable indicator of value. In support of that proposition, the Dissenters relied

on *FGL Holdings* where Parker J held that the combined effect of the merger announcement and market dislocation made it difficult to assess value from observed trading prices, and that any attempt to estimate a hypothetical adjusted market trading price would be *"speculative and inappropriate"*.

396. The Dissenters further submit that the roll-forward exercise undertaken by Professor Fischel was inherently speculative, particularly given the length of the roll-forward period and the volatility and disruption associated with COVID-19. In their submission, the extent of judgment required, and the potential magnitude of error, rendered the AMTP unsuitable as a reliable proxy for fair value.

397. On market efficiency, the Dissenters submit that Professor Yilmaz's critique of Professor Fischel's event-study evidence should be accepted. They contend that a properly conducted event study requires directionally appropriate price reactions to value-relevant information over suitable event windows, and that Professor Fischel's reliance on short windows and a one-tailed significance test overstated the evidence in favour of semi-strong efficiency. They further submit that Professor Yilmaz's analysis demonstrated frequent muted, delayed, or wrong-direction price responses which are inconsistent with an efficient market.

398. The Dissenters place particular emphasis on the existence of MNPI. They submit that management and the buyer group possessed value-relevant information during the relevant period, including revised internal projections, operational updates, and transaction-related analyses, which was not available to the public market. In their submission, those informational asymmetries mean that the trading price could not be assumed to reflect intrinsic value, and that any methodology which proceeds by rolling forward that price is fundamentally flawed.

Analysis

399. AMTP valuations are an accepted methodology in this Court. When the preconditions for their use are met, they can provide a more reliable assessment of fair value than the work of any individual valuer, because they aggregate the views of the entire market. The question in this case is whether the circumstances support meaningful reliance on AMTP.

400. The parties agree that AMTP is a market-based methodology that rolls forward an unaffected trading price to the valuation date using market, sector, and, where necessary, firm-specific benchmarks. They differ on whether the preconditions for robust use of AMTP are satisfied on these facts. Four issues arise:

(i) the proper interpretation of the event-study evidence;
(ii) the existence and significance of MNPI;
(iii) the effect of the 2 April 2020 offer announcement on subsequent trading prices; and
(iv) whether the roll-forward exercise is sufficiently robust, or instead unduly speculative, given market conditions in 2020.

Market Efficiency and the Event-Study Evidence

401. The experts disagreed on whether the market for the Company's ADSs was semi-strong efficient. Professor Yilmaz's critique proceeds on the basis that the absence of immediate and directionally consistent price reactions demonstrated market inefficiency. Professor Fischel rejected that premise. He emphasised that public equity markets do not operate in a manner that produces neat or uniform price responses to every disclosure. Prices may already reflect anticipated information or be influenced by contemporaneous firm-specific, sectoral, or market-wide developments. The absence of a statistically significant or directionally clear reaction to a particular announcement cannot, without more, be treated as determinative of whether the public information was impounded.[56] He also noted that longer event windows risk conflating firm-specific reactions with contemporaneous market-wide, sectoral, or macroeconomic influences.[57] I accept that evidence.

402. Overall, I prefer Professor Fischel's analysis of the event-study record. The instances identified by Professor Yilmaz of muted, noisy, or directionally ambiguous price responses do not, in my view, establish that the market for the Company's ADSs failed to incorporate publicly available information in a timely manner, or that the event-study evidence demonstrates market inefficiency of the kind contended for.

403. The issue is not whether the market for the Company's ADSs was perfectly efficient in all respects. Professor Fischel's evidence usefully emphasised that market efficiency is not a binary condition. Even where a market falls short of semi-strong efficiency in a strict sense, trading prices may nevertheless contain useful and unbiased information about value. The relevant question is whether, notwithstanding imperfections, market prices provide information capable of assisting the Court when assessed alongside other evidence,

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[56] See Professor Fischel's Supplemental Report at paragraphs 12-18

[57] Transcript Day 10 page 72 line 8 et.seq: »Things.that.affect.the.market.don't.only.occur.on.statistically.significant.days¡.It's.an.ongoing.process.that.occurs.every.day?whether.there.is.a.statistically.significant.result.or.not¡‹

particularly in circumstances where alternative valuation methodologies are themselves subject to significant judgment and limitation. I note the opinion of Bradford Cornell, footnoted in Professor Fischel's Expert Report, [58] that:

> *"'[a] market that is not perfectly efficient may still value securities more accurately than appraisers who are forced to work with limited information and whose judgments by nature reflect their own views and biases.'"*

404. I am not persuaded that the event-study evidence demonstrates market inefficiency of a kind that would preclude reliance on market price. In reaching that conclusion, I take into account both the structural characteristics of the market in which the Company's ADSs traded and the evidence of how that market responded to public disclosures. The Company's ADSs were listed on the NYSE, traded in a deep and liquid market, were held predominantly by institutional investors, and were subject to extensive analyst coverage. Against that background, I attach weight to Professor Fischel's evidence that, on the relevant earnings announcement dates, trading volumes increased materially and that multiple analysts issued reports contemporaneously or shortly thereafter. Elevated trading activity and prompt analyst response are consistent with a market actively processing new public information, even where net price movements are muted or influenced by other contemporaneous factors. In my view, taken together, those features support the conclusion that the market for the Company's ADSs was operating in a semi-strong efficient manner, notwithstanding the absence of uniform or directionally clear price reactions to every disclosure.

405. I therefore find that the market for the Company's ADSs was semi-strong efficient at the relevant time, such that consideration of the AMTP is permissible, subject to the remaining issues.

The Date

406. I prefer Professor Fischel's evidence on this point and accept that if the April bid was still influencing market pricing in June, one would expect the ADSs to trade towards the offer price of $55 and not remain materially below it in the $47–52 range. It was clear when the KWEB index was unwound that the Company performed well below the other companies in the index. I accept Professor Fischel's explanation, which was supported by

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[58] Footnote 107. Original citation published by Macey and Mitts in "Asking.the.Right:Question¿The.Statutory. Right.of.Appraisal.and.Efficient.Markets? 74 The.Business.Lawyer.(Fall 2019) 1015-1064, at 1045-1046

the evidence of Messrs Yao and Ye, that the Company's predominantly offline, person-to-person business model was adversely affected by COVID-19, in contrast to the online-platform constituents of KWEB that benefited from stay-at-home dynamics.

407. The fact that the ADSs remained well below $55, even as peer indices recovered, supports the inference that the market was responding to the Company's operational headwinds rather than impounding the probability of a transaction taking place at $55 in the price.

408. Accordingly, although the April indication generated a short-lived market response and would have been known to market participants thereafter, I am satisfied that by 12 June the trading price was no longer materially influenced or anchored by bid-related expectations, and that it reflected the market's assessment of the Company's standalone prospects in prevailing conditions. In those circumstances, it provides a sufficiently unaffected point of departure for the purposes of the regression analysis.

MNPI

409. My conclusions on market efficiency and date selection do not, however, resolve the distinct question whether the AMTP provides a reliable indicator of fair value in the informational circumstances of this case.

410. In the Cayman s. 238 authorities, reliance on the market trading price as an indicator of fair value has been treated as conditional. As Segal J explained in *Trina Solar* at first instance at [35],

> *"Where a company contends that market trading price is indicative of fair value, it must demonstrate both that there was no material non-public information and that the market for the relevant shares at the relevant time was semi-strong efficient."*

411. At the same time, Kawaley J in *Nord Anglia* emphasised that the inquiry is ultimately evaluative, observing at [110] that:

> *"the relevant threshold question pertinent to deciding whether a DCF valuation should be pursued is whether the existence of MNPI and the possibility that the Shares were undervalued by the market justifies looking beyond the Market Price with a view to arriving at a more reliable conclusion as to fair value."*

412. Read together, these authorities make clear that the presence of MNPI does not automatically preclude reliance on market price, but requires the Court to assess the

nature, significance and likely impact of the information said to have been unavailable to the market.

413. There was undoubtedly information within management and the buyer group during the relevant period that was not disclosed to the public market, namely revised management projections prepared shortly before the EGM, certain operational updates, including the April ZZ communication, and buyer side analyses. Professor Yilmaz contended that the market's lack of awareness of this information rendered the AMTP unreliable. Professor Fischel accepted the existence of MNPI but rejected the assumption that its net effect would have been to increase the trading price but that is not the test; the question is whether the information was material in the sense that, had it been available to the market, it could have affected the market's assessment of value. In my view, the management projections and the ZZ information were material in the requisite sense.

The Roll Forward

414. The presence of MNPI, however, affected Professor Fischel's AMTP analysis in a further and more direct way. Professor Fischel estimated a regression between the Company's returns and movements in market and industry indices over the one-year period ending 31 December 2019, and used it to adjust the share price at 12 June for changes in market and industry factors to 4 September. He then applied a firm-specific downward adjustment to reflect adverse information emerging in 2020, principally the September Rolling Forecast. [59]

415. That firm-specific adjustment was informed by management's internal projections and rolling forecasts that were not available to the market. Professor Yilmaz characterised this feature as the introduction of MNPI into a methodology that purports to infer value from market pricing. Once the trading price is "corrected" by reference to undisclosed internal assessments of the Company's performance - MNPI- the analysis departs from the premise that market price provides a reliable proxy for value based on information available to the market at the relevant time. To put it another way, the Company's proposition that the AMTP is a superior valuation method because it is an objective market-based methodology is undermined once the AMTP requires firm-specific adjustments based on MNPI and evaluative judgment outside the regression model.

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[59] See discussion at pp 56-58 Fischel report

416. Taking all these matters into account, I conclude that the AMTP is not a reliable indicator of fair value in this case and should be accorded no material weight.

417. I now move to a consideration of the Discounted Cash Flow analyses performed by the Experts.

Discounted Cash Flow Analysis

418. Discounted cash-flow analysis is intended to provide a direct measure of intrinsic value by estimating the present value of the cash a business is expected to generate in the future. It is intended to capture the long-term cash-generating ability of the company as a going concern. It is common ground that it is standard practice to use DCF analysis in preparing fairness opinions. Adopting Mr Adkin's description with which Professor Fischel agreed and which has the advantage of simplicity, the model has two key elements: projections of free cashflow for the relevant company into the future and the application of a discount rate to those future free cashflows to discount them back to present. The first element itself breaks down into a forecast of "future value" over a defined period, and a "terminal value" represents the cash flows beyond that period. The period in this case is five years 2020 to 2025.

Professor Fischel DCF

419. Professor Fischel explained in his Report that he used DCF to estimate the value of the Company's Core Business as at the valuation date. He then added the value of the Company's partially-owned businesses and other non-operating assets to arrive at an estimate of enterprise value.

420. The foundation of DCF analysis is the principle that the value of a financial asset equals the present value of the future cash flows that the asset is expected to generate. Expected cash flows are discounted at a rate that reflects the risk associated with receiving those cash flows. Enterprise value equals the value of the operating business plus the value of any non-operating assets such as excess cash or minority investments, and equity value is obtained by subtracting debt and any other non-equity claims from the estimated enterprise value.

Cash Flow: Management Projections and Their Limitations

421. Professor Fischel began his DCF analysis by identifying the management five-year financial projections provided in the transaction process as the source of the forecast cash-flow estimates. He noted however, a DCF analysis based on the Management Projections

would not provide a reliable estimate of the fair value of the Company's Core Business on the Valuation Date for the reason that the projections were prepared for internal planning purposes and based on assumptions about successful execution of the Company's business plan, rather than representing a probability-weighted estimate of expected future cash flows.

422. As I understand his evidence, a proper DCF should reflect expected cash flows, which in economic terms represent the probability-weighted average of possible outcomes. The Management Projections did not constitute such expected cash flows. They assumed that management would successfully implement its business plan and that key macroeconomic and competitive assumptions would hold. They therefore reflected only *"one possible scenario,"* rather than the range of plausible positive and negative outcomes required for a probability-weighted forecast

423. Professor Fischel also considered the projections no longer reliable by the valuation date. Relying on Mr Ye's evidence, he noted that by July 2020 rolling forecasts showed that the Company's performance had deteriorated materially from the May projections: lower revenue, lower profit, compressed margins, increased advertising expenditure required to address intensifying competition, and continued COVID-related disruption. Adjusted EBITDA for the Core Business declined by approximately 23.5% between May and September 2020. In his view, these developments meant that the May projections could not be used as the cash-flow inputs for a September valuation.

424. In light of these issues, he constructed a set of "CL Updated Management Projections." He replaced the projected 2020 adjusted EBITDA figure with the September Rolling Forecast and projected forward using the growth rates embedded in the Management Projections.

425. Professor Fischel held constant the projected depreciation and amortisation, tax, capital-expenditure, and working-capital assumptions from the Management Projections in order to derive updated free-cash-flow forecasts for 2020–2025. These updated projections formed the basis of his DCF valuation.

Discount Rate: CAPM and the Derivation of the WACC

426. The second pillar of Professor Fischel's DCF methodology was the construction of the discount rate. He described the discount rate as the mechanism by which future cash flows are converted into present value and explained that its purpose is to reflect the risks inherent in the Company's future operations. The discount rate is calculated using the weighted average cost of capital ("WACC"), representing the opportunity cost of capital

for the Company's investors. As the Company had no long-term debt, its WACC was effectively equal to its cost of equity.

427. To derive the cost of equity, he applied the Capital Asset Pricing Model ("CAPM"), which he identified as the standard framework in financial economics for this purpose.

428. He explained that CAPM uses three principal inputs: the risk-free rate of interest, the equity-market risk premium or the additional return investors require for holding equities of average risk, and the Company's beta, which he estimated by reference to comparable companies using the S&P 500 Index as the market proxy. His CAPM inputs were:

- Risk-free rate: 2.5%
- Equity-market risk premium: 6%
- Beta: 1.555

429. These inputs produced a base cost of equity of 11.83%. He then added a size premium of 0.73%, resulting in a cost of equity of 12.56%, and a country-risk premium of 1.03%, resulting in a final cost of equity of 13.59%.

430. Given that the Company had no meaningful long-term debt, Professor Fischel treated the WACC as effectively equivalent to the cost of equity. He therefore applied the cost of equity derived from his CAPM analysis as the discount rate for the purposes of the DCF valuation. This rate was used to discount both the projected free cash flows over the explicit forecast period and the terminal value calculated at the end of that period.

Terminal Value

431. Professor Fischel then calculated the terminal value. He explained that the DCF method requires an estimate of the value of the operating business at the end of the explicit forecast period. Once calculated, the terminal value is discounted to present value and added to the discounted cash flows in the explicit forecast period.

432. He used a perpetuity growth rate ("PGR") to estimate terminal value, representing the long-term rate at which free cash flows are assumed to grow into perpetuity. He explained that if the Company made only maintenance capital expenditures, its PGR would equal the long-run expected inflation rate which was 1.80% as of 1 September 2020. A higher PGR would require the Company to reinvest a portion of its after-tax operating profits and earn a positive return on that reinvestment. Accordingly, any assumed PGR must be consistent with the level of reinvestment and the expected return on new capital in the terminal period.

433. Given the competition the Company faced, his DCF analysis assumed the Company's rate of return on new investment capital ("RONIC") would equal its WACC during the terminal period. This steady-state assumption implies that while reinvestment levels may influence the PGR, they do not affect the terminal value with the result that the DCF does not depend on the precise PGR or the assumed amount of reinvestment in the terminal period.

Enterprise and Equity Value

434. Having derived his discount rate and calculated the present value of the projected free cash flows and the terminal value, Professor Fischel aggregated these components to estimate the enterprise value of the Company's operating business as at the Valuation Date. He then added the value of non-operating assets—including the Company's interests in partially-owned businesses, its portfolio of long-term investments, and its substantial cash and short-term investment holdings—and deducted convertible notes and other non-equity claims to convert enterprise value into equity value. Based on this approach, his DCF analysis yielded a Core Business enterprise value in the range of approximately $2.59 to $3.06 billion and a total enterprise value of approximately $7.93 to $8.40 billion.

435. Dividing the resulting equity value by the fully-diluted share count produced an implied DCF equity value of $25.57 to $27.09 per share, later revised to $25.18 to $26.68 in his supplemental analysis, all of which lay materially below the Merger Price.

436. Professor Fischel explained that he adopted a normalised risk-free rate of 2.5%, rather than the contemporaneous 20-year U.S. Treasury yield, on the basis that pandemic-era monetary conditions had temporarily depressed government bond yields below levels consistent with long-run equilibrium. He paired this with a two-year weekly beta estimated using data ending before the onset of COVID-related market volatility and before the announcement of the Original Proposal, and in some variants included a size premium and a country risk premium. In his view, these adjustments were necessary to avoid understating the discount rate and thereby overstating the enterprise value.

437. He further explained that, in the absence of evidence that the Company could sustain returns above its cost of capital in the long run, academic valuation sources he relied on support assuming that returns on new investment converge to the cost of capital in the terminal period. He regarded the Company's competitive environment, technological risks, and recent performance trends as inconsistent with any assumption of persistent excess returns.

438. Professor Fischel reiterated that the WACC represents the blended return required by capital providers and is the appropriate rate for discounting the Company's free cash flows on an enterprise basis. He also emphasised that key discount-rate inputs, including beta and the risk-free rate, are estimates subject to significant statistical error, with the result that DCF outputs vary with changes in those assumptions. For that reason, he cautioned against placing undue weight on DCF results and expressed the view that, in this case, market-based evidence provided a more reliable guide to fair value.

439. In cross-examination, Mr Adkin challenged multiple elements of Professor Fischel's methodology and inputs.

440. Mr Adkin confronted Professor Fischel with his criticism that management projections were not a reliable DCF input because they did not represent a probability-weighted forecast of all possible outcomes. Mr Adkin put to him that the projections reflected management's *"central case"* as to what would actually happen in the future. Professor Fischel accepted that the projections represented management's best estimate as at May 2020 assuming successful execution of its business plans but maintained that they did not represent a probability-weighted forecast and did not include the range of downside outcomes he considered relevant to a DCF.

441. Mr Adkin explored Professor Fischel's treatment of the General Atlantic base case projections (the "**GA Base Case**"), which counsel suggested represented a more accurate and better-informed view of the Company's prospects, given General Atlantic's access to extensive non-public information and its position as a real buyer. Professor Fischel rejected that proposition. He expressed the view that the GA Base Case reflected a privatisation scenario rather than expectations for the Company as a continuing public entity. In his Supplemental Report, on which he was cross-examined, he set out his reasons for concluding that the GA Base Case was prepared on a go-private basis. He relied in particular on the 11 June Investment Committee memorandum and the 30 June deck as presenting a go-private investment thesis, including *"significant value creation from financial engineering,"* balance-sheet optimisation, and strategic and organisational changes, and said that *"the context defines what the projections are for."* [60]

442. Professor Fischel said that the GA Base Case remained a "go-private" case even if it was labelled "conservative," a point which Mr Adkin pressed. He explained that the GA Base Case sat within the go-private framework, noting that the MOIC bridge labelled "Base Case" (E/771/10) included business growth, multiple expansion, liquidation of

[60] Transcript Day 12 Page 160 line 10

unprofitable investments, and ESOP cost, all of which he said are part of the base case. For that reason, he maintained that the GA Base Case could not be read as reflecting a *"public company with no change"* scenario.

443. It was suggested to Professor Fischel that he was inferring from what General Atlantic said about financial engineering in the document that they had, *as a matter of fact*, produced their base case projections on a go-private footing. Professor Fishel responded that he was not drawing an inference. Rather, it was the necessary conclusion from his analysis of the going private transaction, as compared with the company purely as a public company with no changes. Pressed, he responded:

> *"I'm not sure how to answer beyond what I've said. It may be a question of fact, but if you understand what financial engineering means in the going private projection documents, you can say whether that's consistent or inconsistent with Professor Yilmaz's conclusion --that what was done was based on a public company with no changes."*

444. Although he accepted in cross-examination that he had not investigated the genesis of the projections or compared them with General Atlantic's earlier stay-public projections, Professor Fischel maintained that the context and content of the 11 June materials show that the projections were developed as part of the privatisation plan.

Professor Yilmaz DCF

445. Professor Yilmaz advanced a valuation founded principally upon a DCF analysis. He described the DCF methodology as the "gold standard" of valuation practice, both in the academic literature and among professional investors, on the basis that it seeks to determine the fundamental value of the enterprise by reference to the cash flows the business is expected to generate, discounted at a rate commensurate with the risks to which those cash flows are subject.

446. Professor Yilmaz explained that DCF requires three categories of inputs: (i) reliable projections of free cash flows during a discrete forecast period; (ii) a terminal value capturing earnings beyond the explicit forecast period; and (iii) an appropriate discount rate reflecting the risk of the projected future cash flows. In his evidence, he emphasised that if each input is properly selected, the DCF exercise offers the most economically coherent and internally consistent means of arriving at fair value.

Selection of Projections

447. Central to Professor Yilmaz's approach was his selection of the GA Base Case. He regarded those projections as more reliable than the Company's own internal projections and adopted them as the basis for his analysis. In his report, he explained that view by reference to General Atlantic's position as a sophisticated institutional investor and its involvement in the transaction, noting that General Atlantic had been a long-standing shareholder, held a board seat, and had access to operational and financial information. He also relied on matters set out in his Report concerning the process by which the General Atlantic projections were prepared, including that General Atlantic had commissioned commercial diligence from Bain & Company and financial diligence from Ernst & Young, and that General Atlantic prepared more than one set of internal projections in connection with its investment decision.

Terminal Value

448. For the terminal value, Professor Yilmaz employed a Gordon Growth Model, selecting a perpetual growth rate of 3.2%. This rate represented a midpoint between the long-term expected inflation rate of 2.2% and long-term nominal GDP growth of 4.2%. He explained that the selected rate reflected his assessment of the Company's long-run growth prospects and was intended to maintain consistency between the assumed growth of the business and the reinvestment required to support that growth.

449. He further assumed that new invested capital in the terminal period would earn a return of WACC plus 2.5%, reasoning that while perfect competition would imply returns equal to the cost of capital, academic literature suggested that excess returns of 2-3% may persist for mature businesses.

Discount Rate

450. In calculating the discount rate, Professor Yilmaz employed a WACC of 9.32%. His cost of equity inputs were as follows:

- Risk-free rate: 1.25%
- Equity-market risk premium: 6.11%
- Beta: 1.32

451. He based his risk-free rate on the 20-year U.S. Treasury yield as at the Valuation Date. He rejected the use of any "normalised" long-term rate on the basis that valuation must reflect market conditions prevailing at the valuation date.

452. The Equity Risk Premium was based on the arithmetic average of the historical spread between U.S. equity market returns and Treasury bonds since 1926.

453. His choice of beta was estimated using a five-year monthly beta drawn from Capital IQ and adjusted using a Blume mean-reversion factor. He explained that he regarded this approach as more stable than betas derived from shorter or COVID-disrupted time periods.

454. Crucially, Professor Yilmaz rejected the inclusion of any country risk premium or size premium in the discount rate. He explained that a US-listed company with a global investor base does not warrant a sovereign-spread adjustment and further argued that the Company's PRC-related risks were already captured in the beta. He regarded both sovereign risk premia and size premia as inconsistent with modern finance theory and creating a risk of double-counting.

Result of Yilmaz's DCF

455. Applying the GA Base Case cash flows, the 3.2% PGR, and a WACC of 9.32%, Professor Yilmaz derived:

(i) an enterprise value for the core business of approximately $10.9 billion; and
(ii) after adding long-term investments, cash, and other adjustments, a total equity value of approximately $16.4 billion.

456. This corresponds to a fair value of $105.56 which he later adjusted to $105.78 following agreed corrections relating to the valuation of long-term investments.

457. Professor Yilmaz advanced three principal criticisms of the DCF analysis adopted by Professor Fischel. First, he maintained that the Houlihan Lokey cash-flow model on which Professor Fischel relied was built on forecast inputs that were unduly pessimistic, particularly the downward-adjusted September 2020 revisions embedded in the "CL Updated Management Projections". He said that these inputs produced free cash flows so depressed that they fell below even the downside case of the General Atlantic projections, a result he regarded as implausible as at the valuation date.

458. Secondly, he identified what he described as material technical errors in the cash flow construction that Professor Fischel adopted from Houlihan Lokey's fairness opinion model, including omitting an entire year of free cash flows and miscalculations in working capital, which systematically depressed free cash flow and thereby undervalued the Company.

459. Thirdly, he criticised several aspects of Professor Fischel's discount-rate methodology including the adoption of an elevated *"normalised"* risk-free rate, the use of a beta estimated over what he contended was an unstable window, a country-risk premium which he said duplicated risks already captured in beta and the inclusion of a size premium which he regarded as conceptually inappropriate for a company of 58.com's scale and unsupported by any firm-specific evidence. He maintained that, taken together, these input-level and structural issues resulted in a valuation framework that failed to reflect a reasonable range of risk-adjusted outcomes as at the valuation date.

460. In cross-examination, Mr Boulton tested Professor Yilmaz's criticism that the September-based revisions embedded in the Houlihan Lokey model were unduly pessimistic by taking him to contemporaneous internal communications suggesting concern within the business about trading performance in the second half of 2020. In particular, he put to Professor Yilmaz an email from Warburg Pincus (5 August 2020) reporting that Mr Ye considered there was a "big probability" the Company would miss the relevant budget case, with a substantial shortfall in forecast net profit, and attributing the expected miss in part to overspending on advertising in the Jobs segment. Professor Yilmaz accepted that the email recorded contemporaneous concern, but maintained that isolated documents of that kind had to be weighed against the wider evidential record.

461. Professor Yilmaz was taken in detail to the GA Base Case materials and to the deposition evidence of Mr Zhang, on which he relied in support of his contention that the GA Base Case was a public-company forecast that had "evolved" from General Atlantic's earlier public five-year plan. Counsel suggested that the materials did not in fact state that the GA Base Case assumed the Company would remain public.

462. Counsel suggested that the April model projected revenues by applying percentage growth assumptions to the previous year's results, whereas the June model used in the GA Base Case was constructed on a materially different, bottom-up basis following the due-diligence process, incorporating disaggregated segment-level inputs which had not featured in the earlier model. He put to Professor Yilmaz that this amounted to a change in the basis of the modelling. Professor Yilmaz accepted that the June model was *"much more granular"* but maintained that it nevertheless remained derived from General Atlantic's earlier public company plan.

463. It was put to him that the portions of Mr Zhang's deposition on which he relied did not state that the GA Base Case was a public company forecast. Counsel suggested that those passages merely confirmed that the April 25 five-year plan, which was prepared on the

assumption that the Company remained public, projected revenue growth of 11% CAGR, and that the only proposition Mr Zhang confirmed was that the April plan, not the GA Base Case, reflected a public-company assumption. Professor Yilmaz maintained that his understanding was that Mr Zhang was confirming that the GA Base Case represented a "*downgraded version*" of the April public company forecast, moving from 11% to 10% CAGR.

464. It was also put to him that there was no document stating that the GA Base Case assumed the Company would remain public, and that this was an inference he had drawn from the materials. He asserted that there were *"documents that specifically state that"* within General Atlantic's internal communications and suggested that the relevant material *"might very well be"* the exhibit shown to him or *"maybe another document"* but insisted that *"there are documents that I have seen."*

465. Professor Yilmaz accepted that General Atlantic's modelling became significantly more detailed between April and June as the due-diligence process progressed but maintained that it remained derived from its public five-year plan. When it was put to him that the only identifiable connection between the April plan and the GA Base Case was the reduction in revenue growth from 11% to 10% CAGR, Professor Yilmaz accepted that this was the basis on which he inferred that the GA Base Case represented the public-company forecast.

466. Although Professor Yilmaz maintained that General Atlantic's internal communications supported his interpretation, no contemporaneous document was identified in the evidence which expressly stated that the GA Base Case assumed the Company would remain public. The point was not clarified in re-examination.

467. He was cross-examined on the basis of his terminal value assumptions, in particular his assumption that the Company would continue indefinitely to earn returns on new invested capital in excess of its cost of capital after the end of the explicit forecast period. In that context, he was asked how he had approached the question of the competitive environment the Company was likely to face from 2026 onwards. His answers referred in general terms to competitive dynamics in the sector, including the position of Beike as a significant competitor and to commentary suggesting the possibility of *"winner-take-all"* dynamics in certain markets.

468. He accepted that uncertainty increases with the length of the forecasting horizon but maintained that his assumptions reflected standard valuation practice. He defended his 3.2% perpetual growth rate as a conservative midpoint between inflation and long-run

GDP growth and rejected the suggestion that a lower rate was required to reflect potential competitive or technological disruption.

469. He also defended his assumption that the return on new invested capital in the terminal period would exceed WACC by 2.5%. He stated that in his view many firms sustain excess returns above their cost of capital over extended periods. He considered Professor Fischel's assumption that new investment would earn only the cost of capital to imply a perfectly competitive environment, which he regarded as an unrealistically extreme case. In support of his view, he referred to early-2020 Company and consultant materials which he considered indicative of the Company's long-term competitive position, while accepting that those materials did not specifically address the period beyond 2025.

470. He also accepted that his model assumed a positive contribution from working capital in perpetuity. He explained that this reflected the structure of the General Atlantic model and the Company's use of customer advances, although he accepted that this assumption had not been addressed expressly in his Reports.

471. Professor Yilmaz rejected Professor Fischel's use of a normalised risk-free rate. In his view, valuation should reflect the market conditions prevailing at the valuation date, and the appropriate risk-free rate was therefore the contemporaneous yield on long-term US Treasury securities.

472. He also defended his use of a five-year monthly beta estimated from market data and adjusted using the Blume methodology. While he accepted that beta estimates are subject to wide statistical confidence intervals, he considered this an inherent feature of regression analysis rather than a reason to depart from conventional estimation approaches.

473. He further rejected the inclusion of a size premium and a country risk premium. In his view, academic finance research does not support a size premium for companies of 58.com's scale and adding a country risk premium risks double counting risks already captured in beta.

Analysis

474. The divergence between the experts' DCF valuations reflects differences in methodology, not merely inputs.

475. Professor Fischel adopted the Company's management projections, updated where appropriate, constructed discount-rate parameters that yielded a higher cost of equity, including size and country premiums which he presented in ranges, and applied

conservative long-term growth assumptions. His DCF was presented primarily as a cross-check against market-based indicators, which he considered to be the superior guide to fair value.

476. Professor Yilmaz approached the exercise differently. He recalibrated the Company's forecast cash flows, applied higher long-run growth trajectories, constructed a discount rate without additional premiums, and rejected any market-based calibration. His DCF was advanced as an independent, stand-alone estimate of intrinsic value.

477. These differing methodological starting points, combined with different choices, including the treatment of management projections, the construction of the discount rate and terminal-value assumptions, explain the substantial gap between the two DCF outcomes. While the experts differed across a number of inputs, the principal areas of disagreement concern the following inputs:

Choice of projections:

(i) whether the management projections were reliable as at the valuation date;
(ii) whether it is appropriate to incorporate the September 2020 rolling forecast; and
(iii) whether the "GA Base Case" relied on by Professor Yilmaz represents a reliable forecast of the Company's expected performance as a stand-alone public company, including whether it was prepared on a public-company footing or reflected transaction-specific considerations;

Discount rate components

- Beta;
- Risk-free rate; and
- ERP and whether to include size premium and country risk premium;

Terminal Value Assumptions:

- Perpetual Growth Rate; and
- Return on new Invested capital.

478. The central issue for determination is the selection of the cash-flow projections used in the DCF analysis, as that choice is the most consequential driver of the valuation outcome. Professor Fischel relied on the Company's management projections, updated to incorporate the September 2020 rolling forecast, whereas Professor Yilmaz derived his projections from the GA Base Case.

479. Professor Yilmaz considered the GA Base Case to be the best-informed and most reliable forward-looking forecast, because General Atlantic had undertaken *"a huge amount of due diligence"* and had superior knowledge of the business, partly because its managing director sat on the Company's board.

480. He concluded that the GA Base Case had *"evolved"* from General Atlantic's prior public-company five-year plan and was a forecast of the Company's performance as a public company, but it is clear that in so finding, he relied on his interpretation of Mr Zhang's deposition and on the perceived continuity between an 11% CAGR in the earlier public plan and a 10% CAGR in the GA Base Case. The deposition passages relied upon do not, in my view, support that conclusion, and no General Atlantic document indicates that the public-company plan was converted into the GA Base Case.

481. Professor Yilmaz accepted in cross-examination that the GA Base Case contained elements premised on privatisation such as new ESOP, LTI liquidation and share-dilution effects but maintained that General Atlantic had not adjusted the core business cash flows away from the earlier public-company case, save to revise them downward following due diligence, and that the Base Case was therefore *"inherently the same"* as the public-company plan. He extracted - that is, selected - only the *"core business"* cash flow projections.[61] He accepted that the projections of free cash flow were prepared on the assumption that privatisation would occur and the buyer group's value creation initiatives would be implemented, but said that *"they all come in a single bundle and I take the necessary components and tease them out as I need them."*[62] Nothing in the contemporaneous General Atlantic materials suggests that the Base Case could be disaggregated in that way or that it was ever a public company case.

482. Having considered his evidence as a whole, I reject the GA Base Case as a reliable foundation for a discounted cash flow valuation of the Company as a public company. I find as a fact that the General Atlantic projections were prepared as part of the financial modelling undertaken by General Atlantic in evaluating the proposed take private transaction, and not as an independent assessment of the Company's expected performance as a public company. The contemporaneous materials demonstrate that the modelling formed an integral part of General Atlantic's investment thesis and incorporated assumptions relating to post transaction financial structuring, incentive arrangements and operational initiatives associated with a privatisation scenario.

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[61] Day 20 page 51

[62] Ibid page 16

483. In those circumstances, the GA Base Case cannot safely be treated as a forecast of the Company's expected performance as a public company, and it does not provide a sound basis for a DCF valuation directed to fair value as at the valuation date.

484. This conclusion is confirmed by the valuation outcome to which reliance on the GA Base Case leads. When used as the forecasting foundation for a DCF, it produces a valuation materially in excess of all contemporaneous prices, including the merger price and observed trading prices. It also exceeds the internal valuation work prepared by General Atlantic, including its sum-of-the-parts analysis valuing the Company at approximately $96 per ADS, on which Professor Yilmaz relied as corroborative support. In the circumstances where neither the negotiated merger price nor any contemporaneous internal valuation used by participants approached the price implied by Professor Yilmaz's DCF, the degree of divergence undermines the reliability of his DCF as an indicator of fair value as at the valuation date and is consistent with conclusion that the cash flow inputs do not provide a reliable basis for valuation.

485. The Dissenters contend that the only reliable indicator of fair value is a DCF analysis because the transaction occurred against a backdrop of COVID-related market dislocation, with the result that contemporaneous trading prices were temporarily depressed and not reflective of intrinsic value. I accept that market conditions in 2020 were unusual and that uncertainty was heightened. However, the evidence does not support treating the prevailing price level as the product of a short-lived market shock divorced from Company-specific fundamentals. Mr Yao's evidence was that the Company was facing strategic and competitive challenges that pre-dated the valuation date and required a "transition", including that the Company's products were "getting old" and that its business model was predominantly offline and person-to-person. The evidence further supports that, by the time the merger closed, management was not on track to meet the revenue trajectory embedded in the May projections, and that uncertainty about the duration and longer-term effects of COVID-19 increased rather than reduced the difficulty of forming reliable forward-looking assessments.

486. The remaining question is whether a DCF analysis constructed on management-derived forecasts provides any useful assistance. As set out earlier, Professor Fischel's evidence was that the Management Projections prepared in May 2020 were not designed to represent probability-weighted expected cash flows for valuation purposes but instead reflected a single planning case based on assumptions of successful execution of the Company's business plan. By the valuation date, they were already "stale", having been overtaken by events, particularly as the effects of COVID-19 and competitive pressures became clearer during mid-2020.

487. Professor Fischel sought to construct a DCF using those projections by updating them to reflect the September 2020 rolling forecast for 2020 EBITDA, while retaining management's longer-term growth assumptions, producing the "CL Updated Management Projections". That approach mitigates, but does not eliminate the fact that the forecasts reflect a single planning case with the result that the resulting valuation remains of limited reliability.

488. His DCF analysis is advanced as a cross-check only, but given the limitations of the management-based forecasts discussed above, I consider that it cannot usefully serve as a cross-check of fair value.

Comparable Companies Analysis

489. Professor Fischel also carried out a comparable company exercise as part of his overall valuation work. He explained that the exercise was intended to provide contextual reference points alongside the market-based and income-based analyses. He identified a group of publicly traded companies which he considered broadly comparable and applied observed market multiples to projected financial metrics to derive an implied valuation. In cross-examination, that exercise was explored at length. Professor Fischel was questioned on the selection of the peer group, including differences in business mix, scale and sector focus, on the breadth of the comparator set, and on the methodology used to derive implied multiples. He accepted that the identification of comparable companies involves judgment and that different analysts may reasonably select different peers or adopt different approaches.

490. Professor Yilmaz criticised the use of comparable company analysis in this case, emphasising the absence of truly comparable peers and the judgment involved in peer selection, particularly given the Company's multi-vertical business model and competitive positioning. He was critical of the breadth of the peer group adopted by Professor Fischel and questioned the inclusion of companies with materially different business activities, scale, and growth profiles. Professor Yilmaz also challenged the methodology used to derive implied multiples and maintained that the resulting outputs were sensitive to underlying assumptions, including the financial projections applied.

491. In their closing submissions, the Dissenters sought to deploy the comparable company exercise as a forensic tool to undermine the reliability of market-based valuation indicators. They did not advance comparable company analysis as an alternative valuation methodology. Rather, they relied on disagreement over peer selection, and on the divergence between the companies selected by Houlihan Lokey and those adopted by Professor Fischel, as illustrating how sensitive to judgment in peer selection.

492. On that basis, the Dissenters submitted that comparable-company analysis did not support the transaction price and could not be relied upon as corroborative evidence of fair value.

493. In light of my conclusions on the reliability of the market-based indicators, it is unnecessary to engage further with that exercise.

DETERMINATION OF FAIR VALUE

494. The Court has considered the full range of valuation methodologies advanced by the parties. For the reasons explained above, the AMTP does not provide a reliable indicator of fair value in this case. Professor Yilmaz's DCF analysis is likewise rejected as a standalone measure of intrinsic value. Professor Fischel's DCF was not advanced as an independent valuation methodology, but only as a subsidiary cross-check to his market-based analysis, given his view that DCF outcomes in this case were highly sensitive to inputs which are a matter of judgment. In light of those sensitivities and the limitations of the management-based forecasts, I do not regard the management-based DCF as a sufficiently reliable method for determining fair value in this case, even as a cross check. The merger consideration therefore emerges as the most reliable indicator of value.

495. The price was the product of negotiations between sophisticated market participants with strong financial incentives to assess the Company's prospects and risks realistically and to maximise value. The buyer group included experienced private-equity investors with access to extensive information about the Company's business, while the Special Committee was advised by independent legal and financial advisers throughout. Although the Dissenters criticised aspects of the deal process, including internal communications and alleged deficiencies in disclosure, the Court is not persuaded that those criticisms disclose any structural defect capable of undermining the negotiated transaction price as the best evidence of fair value, in the circumstances where:

(i) the merger process took place against the backdrop of a well-functioning public market for the Company's shares: the shares were widely held, actively traded on a major public exchange, followed by a substantial number of analysts, and exhibited consistently high trading volumes, providing a reliable context for price formation and negotiation;

(ii) the merger consideration was the product of a negotiated transaction involving commercially sophisticated participants who had access to extensive information about the Company and were able to conduct informed due diligence with the co-operation of management;

(iii) the buyer group undertook its own assessment of the Company and negotiated the price with the Special Committee, which was advised throughout by independent legal and financial advisers;

(iv) the Special Committee was composed of individuals who, although they had not previously served on a special committee, brought significant professional experience to that role, exercised independent judgment throughout and did not simply accept the initial proposal but negotiated on price; and

(v) the absence of competing bids reflected the limited universe of buyers for a transaction of this scale, rather than any price-suppressing effect arising from Mr Yao's dual role or from a failure to conduct a market check.

496. I, therefore, determine the fair value of a share to be US$56 per ADS.

DATED 1 MAY 2026

THE HON. JUSTICE MARGARET RAMSAY-HALE
CHIEF JUSTICE OF THE GRAND COURT