IN THE COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

Neutral Citation Number: [2025] CIGC (FSD) 110

CAUSE NO. FSD 128 of 2021 (RPJ)

IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)
AND IN THE MATTER OF SINA CORPORATION

Before:	The Hon. Justice Raj Parker
Appearances:	Stephen Atherton KC instructed by Gráinne King, Aline Mooney and Catie Wang of Harney Westwood & Riegels (Cayman) LLP on behalf of Sina Corporation Ewan McQuater KC instructed by Zachary Hoskin and Matthew Harders of Collas Crill LLP, Simon Dickson and Adam Barrie of Mourant Ozannes (Cayman) LLP & Shaun Maloney and Farrah Sbaiti of Ogier (Cayman) LLP for certain Dissenters Tom Lowe KC instructed by Sam Dawson, Nigel Smith and Tom Stuart of Carey Olsen for certain Dissenters
Heard:	17 February 2025 – 14 March 2025
Draft Judgment circulated:	14 August 2025
Judgment delivered:	21 November 2025

251121 In the matter of Sina Corporation – FSD 128 of 2021 (RPJ) Judgment

Section 238 of the Companies Act (2021 Revision) -determination of the fair value of the dissenting shareholders' shares in the company-valuation methodology-adjusted market trading price-merger price-discounted cash flow-long term investments-sum of the parts-multiples-deal process-controlling shareholder in voting terms-material non-public information-discounts-Holding Company discount - minority discount.

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JUDGMENT

Introduction

1. This case concerns a 'take private deal' by way of a management buyout (MBO) of a Cayman Islands incorporated company, Sina Corporation (Sina or the Company).

2. Sina has an online media business in the People's Republic of China (PRC).

3. A Petition was filed by the Company on 18 May 2021 which seeks a determination as to the fair value of the shares held by shareholders who elected to dissent from the MBO (the Dissenters).

4. The 28 Dissenters in this case did not accept the MBO price and instead invoked their right to receive the fair value of their shares, together with a fair rate of interest, as determined by this Court in accordance with section 238 of the Companies Act.

Background

5. Sina was incorporated as an exempted limited liability company under the laws of the Cayman Islands in 1997.

6. Sina was the first Chinese internet company to become listed on the NASDAQ, following an initial public offering (IPO) which completed on 13 April 2000. It did so by using a Variable Interest Entity (VIE) structure (of which it was also a pioneer), which allows foreign investors to invest into sectors which are restricted from foreign ownership in the PRC, such as the media sector.

7. Sina's main business was its Portal operation which provides online news and other media content to Chinese users. It was often referred to as 'China's Yahoo'. It also operates a financial technology business engaged in online micro-lending (Fintech).

8. These wholly owned businesses are referred to as 'Sina Standalone'. Fintech was set up in a move to diversify its business, given the challenges to the popularity of Sina's Portal operation over time.

9. Sina is predominantly focused on the domestic and global Chinese communities and derives the overwhelming majority of its revenues from inside China. Over the years, Sina became one of the most high-profile and influential online media companies in China.

10. Of significance is the fact that Sina also owns a substantial stake and has a controlling interest in Weibo Corporation (Weibo), a Chinese micro-blogging platform that is similar to Twitter/X. Weibo is one of China's leading social media sites. Users engage with Weibo to create written public message content, typically but not always with photos, in the same way as 'X' / Twitter, with users following or being followed by other users.

11. The development of Weibo from 2009 allowed Sina to concentrate on the social media business which was to become its biggest source of revenue and value.

12. Weibo was listed on the NASDAQ in April 2014. Weibo also used a VIE structure, with Sina retaining 56.9% of its shares. The majority of Weibo's revenue comes from advertising and marketing customers which can be broken down into three major segments; key accounts (KA), small to medium enterprises (SME), and Alibaba.

13. Alibaba went on to acquire a 30% interest in Weibo and is now Sina and Weibo's biggest client.

14. The competition faced by Weibo came initially in the form of "WeChat", which offered a more private micro-messaging option for users, and by late 2012 WeChat was competing seriously with Weibo for user time.

15. In 2014 Weibo completed an IPO of roughly 10% of its total outstanding shares. Following the IPO, Sina continued to hold approximately 57% of Weibo's total outstanding shares.

16. The Court has been referred to evidence to show that the share prices of Sina and Weibo were in decline between 2018 and July 2020.[1] Sina's share price had at its peak reached US$122.92 per share on 7 March 2018.

[1]From three major indices which track the performance of Chinese equities: (i) the MSCI China Index, which apparently tracks the performance of Chinese equities across various markets, including Mainland China, Hong Kong and those listed overseas; (ii) the NASDAQ Golden Dragon China index, a stock market index that apparently tracks the performance of Chinese companies listed on US exchanges, primarily through American Depository Receipts. It apparently provides a benchmark for investors interested in Chinese equities that are accessible in the US market; and (iii) the KWEB index which refers to the KraneShares CSI China Internet ETF, which is an exchange-traded fund that specifically tracks the performance of Chinese internet companies.

17. To complete the ownership picture, Sina owned a substantial stake in TuSimple Holdings Inc. (TuSimple), an autonomous trucking company based in San Diego, USA, and held various other long-term investments (LTIs) in other Chinese technology and media companies.

The take private deal

18. As explained by the Company, the underlying commercial logic behind the privatisation of Sina was a need for greater flexibility without the constraints of a US listing. This was confirmed in evidence given by the witnesses called by the Company.

19. By becoming a private company, Sina allowed shareholders to exit for cash. This, according to the Company's witnesses, allowed it to seek to restructure the business and take some new directions with additional risks. Innovation and risk taking was believed to be easier to achieve as a private company.

The offer

20. On 6 July 2020, the Company announced that its Board had received a preliminary non-binding letter containing a proposal from New Wave,[2] whereby it offered to acquire all the outstanding ordinary shares of the Company not already owned by New Wave for US$41 per share in cash.

The letter said:

> *"In considering the proposed Acquisition, you should be aware that we are interested only in acquiring the outstanding Ordinary Shares that the Buyer does not already own, and that we do not intend to sell our stake in the Company to any third party".*

21. It is relevant to note in relation to this statement that New Wave controlled 58% of the aggregate voting power of Sina.

22. New Wave is a company incorporated in the British Virgin Islands and was at all material times controlled by Mr Chao, Chairman and Chief Executive Officer of Sina. Mr Chao led the buyer group in the MBO.

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[2] New Wave MMXV Ltd, a British Virgin Islands company majority owned and controlled by Mr Chao, Sina's CEO and Chairman.

23. The offer price of US$41 per share represented a premium of 12% to the trading price of Sina on the NASDAQ (US$36.674 was the Unaffected Market Trading Price (UMTP) of Sina's shares as of 2 July 2020), being the trading day prior to the receipt of the proposal.

24. On the same day, 6 July 2020, the Company announced that the Board had formed a Special Committee, consisting of three independent directors, namely Song Yi Zhang, Yichen Zhang and Yan Wang to evaluate and consider the proposal.

25. The first two directors gave evidence in these proceedings, as did Mr Chao. Mr Wang did not give evidence.[3]

26. The offer letter said that the proposal of US$41.00 in cash per Ordinary Share would:

> "*….provide a very attractive opportunity to the Company's shareholders, the price representing a premium of approximately 20% to the average closing price of the Ordinary Shares during the prior 30 trading days*".

27. On 28 September 2020, the Special Committee having:

(i) negotiated up the price of New Wave's proposed acquisition by US$2.30 (equivalent to an increase in price of US$117,227,902 (5.6%)) from US$41.00 to US$43.30;

(ii) taken advice from Gibson Dunn & Crutcher LLP (Gibson Dunn); and

(iii) met and discussed with Morgan Stanley Asia Limited (Morgan Stanley Asia) whether to recommend that the Company enter into the Merger Agreement, recommended that the Company enter into the Merger Agreement with New Wave.

28. The final price at which the deal was agreed was US$43.30 in cash per Ordinary Share (the Merger or Transaction price).

[3] He was the founder of SRS, the Beijing-based software company that merged with Sinanet.com to become Sina in the late 1990s. He served as Sina's President, from June 2001 to May 2003, as its CEO and Chairman, from May 2003 to May 2006, and as a member of its board of directors, from 2003. Mr Yan Wang was an independent director from August 2012 to March 2021.

29. The Sina Board approved the Merger Agreement at a Board meeting that same day (28 September 2020) and the Merger Agreement was entered into. Under the terms of the Merger Agreement, New Wave was to acquire all of the Company's outstanding ordinary shares not currently owned by it in an all-cash transaction at the Merger Price (US$43.30).

30. The Merger was structured as a merger under Part XVI of the Companies Act. In connection with the Merger, the Company entered into the Merger Agreement and Plan of Merger on 28 September 2020 with New Wave as Parent and New Wave Mergersub Limited, as the Merger Sub, being a wholly owned subsidiary of the New Wave / the Parent.[4]

31. On 23 December 2020, the Valuation Date, the Company held an EGM at which the shareholders voted, amongst other things, on the proposal and to approve the previously announced Merger Agreement.

32. Of the shareholders present and voting in person or by proxy at the meeting, 81% approved the deal representing 93.6% of the votes cast.

33. Of the shareholders voting and present, and unaffiliated to New Wave or the Company's management, 75% voted in favour of the Merger and the Merger Agreement.

34. On 12 January 2021, pursuant to s.238 (4) of the Companies Act, the Company sent a written notice to each of those shareholders that were dissenting from the Merger informing them of the authorisation of the Merger by the shareholders at the EGM.

35. Prior to completion of the Merger, between 13 and 26 January 2021, each of the Dissenters delivered a notice of dissent pursuant to s.238(5) of the Act to the Company. By doing so, the Dissenters gave notice of their intention to reject the Merger Price and demanded payment to them by the Company of the fair value of their shares under s.238(5) of the Act.

[4] The Merger Agreement provided that: (i) the Merger Sub would be merged with and into Sina and would cease to exist, whereas Sina continued as the surviving company and became a wholly owned subsidiary of New Wave / the Parent; (ii) shares in Sina that were beneficially owned by New Wave / the Parent and Mr Chao would continue to exist after the Merger, while shares in Sina held by other shareholders would be cancelled in exchange for the right to receive the Merger Price (except for any shareholders dissenting from the Merger, who would have the right, should they wish, to receive the fair value of their shares as determined in these proceedings).

36. On 22 March 2021 (the Completion Date), New Wave having waived all closing conditions, the Company announced the completion of the deal whereby, among other things, the trading of the Company's shares on the NASDAQ was suspended on 22 March 2021.

37. As a result of the Merger, the Company became wholly owned by the Parent, which company is wholly owned by New Wave, which is wholly owned and controlled by Mr Chao.

38. On 26 March 2021, the Company made a written fair value offer to each of the Dissenters pursuant to s.238(8) of the Act, without prejudice to its position at any trial. The fair value offer, which was equal to the Merger Price, was not accepted by the Dissenters. The provision of this offer to each of the Dissenters began the 30-day negotiation period provided for by s.238(8) of the Act.

39. Between 26 March and 25 April 2021, the Company's 's statutory fair value offer was rejected by each of the Dissenters.

40. As stated above, the Company presented the Petition to the Court on 18 May 2021 (in accordance with s.238(9) of the Act), seeking a determination, pursuant to s.238(11) of the Act, of the fair value of the Dissenters' shares formerly held by them in the Company.

41. This trial has determined that Petition.

The trial

42. Mr Stephen Atherton KC appeared for the Company. Mr Ewan McQuater KC appeared for the Collas Crill, Mourant and Ogier (CCMO) dissenting shareholders and Mr Tom Lowe KC appeared for the Carey Olsen (CO) dissenting shareholders. The CCMO dissenting shareholders together with the CO dissenting shareholders, the Dissenters.

43. It is convenient to shortly introduce three episodes which were contested both on the facts and through the expert evidence process. This is intended to be a neutral introduction to those matters for background purposes.

The Special Committee

44. The role and operation of the Special Committee came under a concerted attack in these proceedings. The following represents a bare outline of the procedure followed to introduce the background.

45. On 6 July 2020, there was a meeting of the Board, at which meeting the Special Committee was formed.

46. In addition to considering, reviewing and evaluating the Merger Proposal and any other alternative transaction that might arise, the Special Committee was authorised to conduct negotiations on behalf of the Company in relation to the proposal from New Wave and also in relation to any alternative transaction and to retain such advisers as it considered appropriate including legal advisers and financial advisers.

47. The Special Committee consisted of three independent directors of Sina, none of whom was affiliated to New Wave, but each of whom was a shareholder in the Company and was an experienced executive with knowledge of the Company, its business and the environment within which it operated: Song Yi Zhang, Yichen Zhang and Yan Wang.

48. During July 2020, the Special Committee considered proposals and conducted interviews with law firms and investment banks for the purpose of retaining independent legal advisers and independent financial advisers to assist it with evaluating and negotiating the Merger Proposal and any alternative transaction that might be forthcoming.

49. The Special Committee appointed Gibson Dunn and Morgan Stanley Asia in August 2020, as their respective independent legal and financial advisers and they each advised throughout the process and attended meetings of the Special Committee.

Morgan Stanley

50. Morgan Stanley as a group was wearing a number of hats. It was simultaneously pitching to provide assistance with the financing arrangements for New Wave (i.e. the buyer, and the Special Committee's counterparty). A separate Morgan Stanley corporate entity, Morgan Stanley & Company LLC (Morgan Stanley USA) was also working with TuSimple, clearing conflicts in relation to its intended IPO.

51. The Dissenters called into question Morgan Stanley's independence and impartiality at the trial, adding for good measure that Morgan Stanley were interested in keeping Sina and Mr Chao happy to further their Sina and Weibo relationship going forward.

52. No one from Morgan Stanley was called to give evidence at the trial to answer these allegations or the criticisms made at trial as to its work, particularly in relation to the Fairness Opinion Morgan Stanley Asia produced.

53. Between 6 July 2020 and 25 September 2020, the Special Committee held weekly meetings, scrutinised the Merger Proposal, considered whether there were any possible alternatives to the Merger Proposal and engaged in negotiations with the Buyer Group, directly and indirectly through Morgan Stanley Asia and Gibson Dunn.

54. On 28 August 2020, the Special Committee requested Morgan Stanley Asia to approach the Buyer Group and negotiate for an increase in the offer price per share and for the inclusion of a Majority of the Minority (MOTM) vote requirement. On 11 September 2020, the Buyer Group increased its offer from US$41.00 per share to US$43.00 per share, but declined to accept a MOTM vote requirement.

55. On the same day and in response to the increased offer from the Buyer Group, the Special Committee requested that Morgan Stanley Asia negotiate with the Buyer Group for a further increase of the offer price up to US$45.00 per share in exchange for conceding the need for a MOTM voting provision.

56. On 16 September 2020, the Chairman of the Special Committee, Song Yi Zhang, approached Mr Chao directly to further negotiate an increase in the Merger price per share, seeking a price increase to US$$44.00 per share; and on 25 September 2020, the Buyer Group revised its offer to US$43.30 per share and stated that this was its "best and final" offer.

57. On 28 September 2020, the Special Committee convened a meeting to discuss the Buyer Group's best and final offer of US$43.30 per share, together with the revised terms and conditions of the draft Merger Agreement and other ancillary documents, the terms of which had been finalised, subject to agreement by the Special Committee.

58. At the meeting on 28 September 2020, Morgan Stanley Asia gave a presentation to the Special Committee and opined that the Merger Price was fair to the Company's shareholders.

59. In conducting its appraisal of the Merger Price and the Company and its businesses, Morgan Stanley Asia had analysed the historical trading prices for the Company's shares, reviewed information from brokers as to target prices, conducted a comparable companies / multiples analysis, considered an 'other similar transactions analysis', carried out a Sum Of The Parts (SOTP) analysis, a leveraged buyout analysis, and a leveraged recapitalisation analysis. It also considered the historic existence of a 'Holdco discount', that had been in existence since around 2017 and applied this discount to its SOTP analysis.

60. The analyses conducted by Morgan Stanley Asia resulted in the presentation to the Special Committee of a range of prices for the Company's shares.

61. At their lowest, Sina's shares were valued at US$27.83 (being the lowest end of the range when calculating the 12-month volume-weighted average price for the shares prior to the Proposal Date (2 July 2020) based on market evidence). At their highest, Sina's shares were valued at US$55.67.

62. Having considered the Morgan Stanley Asia fairness opinion presentation and its fairness opinion, the Special Committee unanimously resolved to recommend to the Board that the Merger should proceed at the Merger Price and on the terms contained in the draft Merger Agreement and related documents and that the proposal be put to the Company's shareholders for approval.

63. Based upon this recommendation, the Board, later that day, agreed to the Merger.

The Aristeia proxy fight

64. The proxy fight[5] was relied on by the Dissenters to show, among other things, that significant governance issues were allegedly prevalent at Sina in the immediate years preceding the merger proposal.

65. An intervention was launched and made public in September 2017 by activist minority shareholders, Aristeia Capital LLC (Aristeia), which raised concerns about the corporate governance and shareholder value in Sina.

[5] Certain shareholders sought to gain influence within the company, including by seeking the appointment of two independent directors to the board.

66. It alleged amongst other things, that Sina's Board was small, with entrenched and long-tenured directors so that none were truly independent. It sought to install two independent directors.

67. It also alleged that various steps the Company had taken were to the benefit of Mr Chao, but to the detriment of the Company's other shareholders.

68. In 2015, Mr Chao had formed New Wave, a BVI special purpose vehicle together with key members of Sina's management team. New Wave acquired 11 million of Sina's newly issued ordinary shares and became the largest shareholder of the Company representing 16% of the issued shares.

69. Aristeia alleged that on two occasions, in 2009 and again in 2015, when Sina had agreed to sell shares worth hundreds of millions of dollars to Mr Chao, by the time the transactions closed, Sina's share price had increased considerably, meaning that the transaction price was at a very substantial discount to Sina's share price.

70. The Dissenters pointed out that in 2015 the shares were sold at a subscription price of US $41.49 per share or an aggregate price of US$ 456.39 million and when the transaction closed five months later in November 2016 the share price was 24% higher than the subscription price.

71. These transactions, it was alleged by Aristeia, represented enormous windfalls for Mr Chao, which it calculated, had reduced the value of public shareholders' holdings by nearly US$1 billion.

72. Aristeia further alleged:

    a) that in the 2015 transaction, the Company had waived a 'poison pill', which would have enabled it to protect other shareholders from the value dilution caused by Mr Chao's discounted purchase of shares.

    b) that Sina's shares traded at a very substantial discount to the net asset value (NAV) of Sina's holdings (in other words, Sina's market capitalisation was far smaller than the value of its holdings). It estimated that Sina was trading at a US$5.3 billion discount to its NAV, representing a 39% discount, despite owning primarily cash and other investments that are easily valued.

73. Aristeia:

a) noted that Sina's stake in Weibo alone was, at that time, worth considerably more than Sina's market capitalisation, and Sina had other investments and standalone activities as well.

b) stated its belief that Sina was "*the most heavily discounted U.S.-listed holding company in existence'.*

c) suggested a number of different and alternative transactions which it contended would "unlock" value, and also sought to effect a change of control of the Board, by introducing new independent directors.

74. In response to this public intervention, Sina's Board formed a 'Strategic Evaluation Sub-Committee' (SESC) to consider Aristeia's complaints and proposals.

75. Mr Chao was one of three director members on that committee, alongside Yichen Zhang and Song Yi Zhang, with Bonnie Zhang (Sina's CFO) also attending.

76. The SESC determined that Aristeia's proposals were not in the Company's interests and the proposed additional directors were not in its view qualified or suitable.

77. The SESC was also of the view that the proposed alternative transactions showed a lack of understanding as to the extent to which control and ownership of these businesses could be changed without Chinese government approval, which was not going to be forthcoming.

78. The Board adopted the determination of the SESC and recommended that shareholders vote against the Aristeia proposals. The Board also emphasised that in their view the need for stability of appropriate leadership was core to the Chinese government's continued tolerance of both Weibo and Sina's foreign ownership structure.

79. The shareholders adopted that recommendation.

The Preference Shares

80. In further response to Aristeia's public intervention, on 3 November 2017, Sina's Board instructed its Audit Committee to consider a new proposal to issue 7,150 Class A Preference Shares to New Wave, for a nominal consideration of US$1 per share, each of which would carry no economic rights but would carry 10,000 votes, the effect of which would be to significantly increase Mr Chao's voting power from 11.1% to 55.5%.

81. The effect of this proposal gave Mr Chao a clear majority of all votes, despite him having (at that time) only 11.1% of the economic interest in the Company.

82. The Audit Committee comprised Song Yi Zhang and Ter Fung Tsao. The Audit Committee recommended that the proposal be approved.

83. The Audit Committee's report recorded the Board's reason for advancing this proposal as follows:

> *"…to ensure the continued execution of the Company's sound business strategies and development plans and avoid costly, time-consuming and disruptive proxy contests in the future, the Board believes that it would be in the best interest of the Company and all of its shareholders for the Company to issue certain Class A Preference Shares with rights and features that are deemed appropriate by the Board".*

84. The upshot of this episode for the purposes of this case was that Mr Chao's voting power in the Company was substantially increased.

The IPO of TuSimple

85. It is necessary to shortly introduce the bare facts of a third episode, the IPO of TuSimple.[6]

86. An issue in dispute is whether the extent and true value of Sina's investment in TuSimple was Material Non-Public Information (MNPI) at the Announcement Date and whether the correct valuation of Sina's investment is informed by its impending IPO and if so, to what extent.

[6] An autonomous trucking company based in San Diego, California

87. Sina's strategic investment in TuSimple was mentioned in a public filing 20-F for the 2019 financial year.

88. Shortly after the Announcement Date, in August 2020, it was reported that TuSimple was planning an IPO.

89. Mr Chao and Ms Bonnie Zhang were each members of the TuSimple board of directors at that time. They both gave evidence about this at trial.

90. As at the Announcement Date, the Dissenters allege that the market was unaware of the size and value of Sina's investment in TuSimple (and, indeed, may have been largely unaware of the investment at all), but in fact that investment was substantial.

91. TuSimple retained Morgan Stanley as its placement agent for its Series E fundraising and, subsequently, appointed it to lead the IPO.

92. By the Valuation Date of 23 December 2020, Morgan Stanley believed that TuSimple could achieve an IPO valuation in the range of US$5 billion to US$7 billion.

93. Later on the same date (13 hours after the EGM took place), the day that Sina's shareholders voted to approve the Merger (the Valuation Date), TuSimple confidentially filed a draft of the S-1 registration statement for its IPO with the Securities and Exchange Commission (SEC). TuSimple proceeded to an IPO shortly thereafter which completed on 15 April 2021, with a pre-money valuation of around US$7 billion.

94. Sina held a 29.8%% stake in TuSimple at the time.

The evidence

Factual witnesses

95. Four witnesses were called to give evidence on behalf of the Company: Song Yi Zhang; Yichen Zhang; Charles Chao and Ms Bonnie Zhang.

96. Song Yi Zhang (Chairperson of the Special Committee) is a Yale educated Founder of Mandra Capital, an investment holding company focused on early-stage opportunities in information

technology, life science, materials and technologies. He was appointed to the Sina board in May 2004 and continued until 2021. He is a former Managing Director of Morgan Stanley Asia's Merger, Acquisition and Divestiture Group, and co-head of the Asia Resources and Infrastructure Group. He had previously worked as a lawyer at Milbank, Tweed, Hadley & McCloy LLP.

97. Yichen Zhang is an MIT educated Chairman, Founder and CEO of CITIC Capital (CITIC) an alternative investment management and advisory company with a deep knowledge of China. CITIC has had over US$15 billion of capital and in excess of 300 portfolio companies since inception. He served as an independent director for Sina from May 2002 until March 2021.

98. Charles Chao has been the Chairman of Sina since August 2012 and CEO since May 2006. He was President from September 2005 to February 2013. From February 2001 to May 2006 he was Sina's CFO, also serving as Joint COO from July 2004 to September 2005. From April 2002 to June 2003 he was Sina's Executive Vice President and from September 1999 to January 2001 he was Sina's Vice President of Finance.

99. Bonnie Zhang has been the CFO of Sina since March 2015. From March 2014 to March 2015, she was the CFO of Weibo. Prior to joining Weibo she was the CFO of AdChina Limited from May 2011 to February 2014. From October 2007 to April 2011 she was an audit partner at Deloitte Touché Tohmatsu based in its Shanghai office serving Chinese companies listed in the US, and Chinese companies making IPOs in the US.

Expert witnesses

100. The Company called as an expert witness Mr Sid Jaishankar and the Dissenters called Professor Bilge Yilmaz.

101. Sid Jaishankar is a Managing Director in the Toronto office of Kroll Canada Limited. He has more than 20 years of experience in business and securities valuation and damages quantification.

102. Professor Bilge Yilmaz is Professor of Finance at the Wharton School of the University of Pennsylvania and he holds the endowed Wharton Private Equity Chair. He has been a tenured faculty member since July 2009.

103. The experts were very far apart in their opinions, both in respect of the fair value of the Dissenters' shares as at the Valuation Date and as to the appropriate methodologies according to which the fair value of those shares should be ascertained.

104. The Company (through Mr Jaishankar) advanced an assessment of the fair value of the Dissenters' shares at US$40.15 per share (US$3.15 (or some 7%) less than the Merger Price of US$43.30 per share).

105. The Dissenters (through Professor Yilmaz) advanced a far higher valuation as to the fair value for the shares in the Company namely, US$137.42 per share (some 217% more than the Merger Price).

The law on fair value

The legal principles to be applied

Section 238

106. As part of the statutory merger process, shares held by dissenting members are 'cancelled' and the former shareholders are entitled to be paid under s.238 of the Companies Act the 'fair value' for those shares:

> "*At the hearing of a petition, the Court shall determine the fair value of the shares of such dissenting members as it finds are involved, together with a fair rate of interest, if any, to be paid by the company upon the amount determined to be the fair value*".

107. The fair value of a share under s.238 is the monetary amount which, on the facts and in the circumstances of the case, represents the Court's best assessment (assisted by the expert evidence), of the intrinsic value or true worth of the shares previously held by a dissenting shareholder.

108. This Court has emphasised, when approaching the task of determining fair value, the importance of safeguarding minority shareholders who dissent from a deal and whose shares

are taken from them, so that their economic interests are properly and fairly assessed and protected.[7]

What is the true worth of a share in the context of fair value

109. The intrinsic value or true worth of a share means the actual value of the financial benefits derived from *the share* itself and that were available to a shareholder, or the true monetary worth to the shareholder of what has been compulsorily appropriated under the provisions of s.238 of the Act.[8]

110. Dissenting shareholders are not compensated for the loss of a proportionate part of the controlling stake which the acquirer of the relevant shares may establish thereby, still less is a dissenting shareholder entitled to be paid an amount equal to a pro rata share in the value of a company's net assets or business undertaking.[9]

What matters are to be considered

111. A non-exhaustive general list of matters to be considered (and not to be considered) in assessing the intrinsic value of a share may be summarised as:[10]

a) the inherent attributes of the shares themselves, both positive and negative, to include all relevant facts and matters relevant to the true monetary worth to the shareholder of what he has lost, undistorted by the limitations and flaws of particular valuation methodologies and fairly balancing the competing, reasonably reliable alternative approaches to valuation relied on by the parties;

b) not any value that may be ascribed to any advantages or benefits or synergies, whether anticipated as at the Valuation Date or that in fact accrue to the relevant company consequent upon or subsequent to the merger transaction;

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[7] Smellie CJ in *Re JA Solar Holdings Co Ltd* at §14
[8] *In the Matter of Trina Solar Limited* (unreported, Grand Court, 23 September 2020) at § 91; *In the Matter of FGL Holdings* (unreported, Grand Court, 1 September 2022) at § 249 and as per the Judicial Committee of the Privy Council in *Re Shanda Games* [2020] UKPC 2, at§ 29 : "the general principle of valuation of shares on sale is that what has to be valued is what the shareholder has to sell"
[9] See§§ [42]-[50] of the Privy Council's opinion and §§[45]-[50] of the judgment of CICA in Shanda supra
[10]See *In the Matter of Trina Solar Limited* (unreported, Grand Court, 23 September 2020) at §53(a), *In the Matter of Nord Anglia* (unreported, Grand Court, 17 March 2020), at §4; in *In the Matter of FGL Holdings* (unreported, Grand Court, 1 September 2022) at §259

c) not any negative value that may be ascribed to any burdens placed upon or detriments to which the relevant company becomes subject consequent upon or subsequent to the merger transaction; and

d) where appropriate, a discount applied to reflect the value of the minority interest.

112. Depending on the circumstances relevant to fair value, the market trading price of the relevant share or the relevant merger price[11] may be relied on to assist a valuation method.

Professional arbitrage investors

113. The Court does not generally place any weight on the character, motivations and intentions of the Dissenters or indeed of the Company, providing the Company has not oppressed or unfairly prejudiced the minority.

114. That is because the nature of the valuation exercise is essentially objective, seeking to ascertain the inherent attributes of the shares themselves, both positive and negative, and to include all relevant facts and matters relevant to the true monetary worth to the shareholder of what he has lost.

115. As this Court said in *Qunar at § 63:*

> *"For example, the character and motivations of the dissenters are strictly irrelevant as is the timing and amount of their investment. It does not matter that the dissenters bought after the merger announcement with full knowledge of it and before the EGM, or whether they in fact voted for the merger or not. That does not affect their entitlement to be paid the fair value of their shares. Even if they can be described as speculative investors engaged in arbitrage, rather than long-term shareholders who are being "taken out" by the majority against their will, that is not relevant to the determination of the fair value of their shares. There is a no more or less deserving dissenting*

[11] *Qunar* [2019] 1 CILR 911 §§ 59-60 fair value "cannot only mean, or only be a proxy for, the market or traded price for the shares. The words used would have been 'market or open market value' or 'traded value' if that was what had been intended". At [60] fair value "means something other than market price. It may mean more, the same, or less".

shareholder in the assessment of "fair value." Fair value needs to be determined in one way for all dissenting shareholders".

116. The Company in this case referred to the nature and extent of the trades of the majority of the Dissenters in this jurisdiction and in others. The Court notes that almost all the Dissenters in this action could fairly be described as investors engaged in arbitrage.[12]

117. The Court notes that all of the Dissenters (apart from one) purchased their shares in Sina subsequent to the merger being agreed on 28 September 2020, in anticipation of the approval of the merger by shareholders and its completion.

118. The Court also notes the comments made in a recent Bermuda case that arbitrage itself may be seen as a legitimate part of the marketplace which contributes to liquidity.[13]

119. The Court does not place any weight on the Company's arguments for penalising the Dissenters for their engagement in arbitrage. They are no less deserving of protection.

What is the flexibility afforded to the Court?

120. The Court in protecting these Dissenters' rights should arrive at an outcome that is not manifestly unfair or unreasonable to other interested parties, for example, those shareholders who accepted the merger offer, and to the Company itself.

121. In exercising its judgment, the Court needs to bear in mind that the appraisal remedy does not entitle dissenting shareholders to a better deal than other shareholders, simply because they dissented.

122. There may be circumstances where the Court will take some account of the context of the Dissenters' decisions to buy their shares and the reasonable expectation of their value.[14] It may be that in certain circumstances the concept of 'fair value' requires some analysis of this to achieve a just and equitable outcome.[15]

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[12] Capital Ventures International is a long term shareholder of Sina {Day2/26:4} - {Day2/27:17}
[13] See *Re Jardine Strategic Holdings Limited* [2023] CA (Bermuda) ("Jardine") at §114
[14] *In the Matter of Nord Anglia* (unreported, Grand Court, 17 March 2020) at §4 and in *In the Matter of FGL Holdings* (unreported, Grand Court, 1 September 2022) at §259
[15] *Qunar* §62

123. That may be so where there is reliable contemporaneous information, direct and objective market evidence, and expert analysis which supports a determination that the fair value of the Company's shares as at the Valuation Date is far lower than the value contended for by the Dissenters and which on the evidence cannot have been in reasonable contemplation when they bought their shares.

Meaning of fair value

124. Segal J helpfully summarised the meaning of fair value as follows (as approved by the Court of Appeal):

> *"In ascertaining fair value, the Court must assess and determine a monetary amount which in the circumstances represents (its best estimate of) the worth, the true worth, of the dissenting shareholders' shares (true worth meaning the actual value to the shareholder of the financial benefits derived and available to him from his shares and by being a shareholder).*
>
> *The reference to fair requires in my view inter alia that the manner and method of that assessment and determination is fair to the dissenting shareholder by ensuring that all relevant facts and matters are considered and that the sums selected properly reflect the true monetary worth to the shareholder of what he has lost, undistorted by the limitations and flaws of particular valuation methodologies and fairly balancing, where appropriate, the competing, reasonably reliable alternative approaches to valuation relied on by the parties".*[16]

Valuation methodology

125. The choice of a valuation methodology depends on the facts of the case, the nature and quality of the expert evidence provided and a judgment by the Court as to what would be appropriate and reliable in assisting it to reach a fair value conclusion.

126. As indicated above, the fair value, or true worth of a share can in certain circumstances be assessed by reference to the market price of the share or, as appropriate, the merger price.

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[16] *In the Matter of Trina Solar Limited* (unreported, Grand Court, 23 September 2020) approved by *Trina (CICA)* at §34; *In the Matter of FGL Holdings* (unreported, Grand Court, 1 September 2022) at §249

127. Another approach is an income approach, often used in the fair value appraisal of a company's shares, such as a Discounted Cash Flow (DCF) methodology which may be blended with other valuation methods using a percentage weighting.[17]A DCF methodology is designed to identify how much it would have cost at the valuation date to buy an investment with a return and a risk profile equivalent to that of the company's business.

128. The selection of a valuation methodology is a fact sensitive issue and in the DCF context, one of the considerations will be the quality of the Company's cash flow projections forming the basis of the valuation.[18]Again, in this case based upon the evidence, the Court has decided this is appropriate and the Company's projections may be relied upon.

129. In most s.238 cases the choice of valuation approach to the components of the business being valued is a key source of contention between the company and the dissenters and indeed the experts appointed by the parties to assist the Court. This case is no exception.

The Court's task

130. In assessing fair value the Court needs to assess, on the particular facts and having regard to the reliability of the opinions expressed by the experts ,which valuation method(s) to apply and if more than one, what weighting to give any particular method.

131. The Court is not bound to accept any particular method, weighting or analysis chosen by the experts, and must form its own view.

132. The Court must not fall into the trap of simply choosing between the two experts.

133. As the CICA said in *Trina*, while the Court:

> *"will undoubtedly look to expert evidence in order to assist it, 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"*[19]

[17] *Trina (CICA)* [35(i)]
[18] *Trina (CICA)* [35(iv)]
[19] §36

134. However, it is inevitable that in reaching its own conclusion a Court will be likely to prefer certain approaches over the others which each expert puts forward. The Court is not equipped to deal with the many technical issues the competing valuation issues throw up from its own expertise and resources.

Reliance on merger price

135. A company seeking to rely on the merger price as an indicator of fair value has the burden of proving that the conditions justifying such reliance are satisfied.

136. In *Trina* Segal J helpfully summarised what is required in order for weight to be placed on the merger/transaction price, and the CICA endorsed that summary in *Trina* (CICA) at [137]:

> *"In my view, the merger price can be evidence of fair value where the transaction process was properly conducted so as to ensure that the market was adequately tested and there is sufficient evidence that market conditions were such as to facilitate an arm's length transaction with all potentially interested parties. The summary given in Dell[20], and referred to by the Company, seems to me to be a good one with some minor modification – where there is sufficient evidence of 'market efficiency, fair play, low barriers to entry, outreach to all logical buyers' and a well designed sales process, the merger price should be given weight in the fair value determination. The precise weight will depend on the evidence as to how good and robust the process was, whether there were any market inefficiencies or problems that limited the participation of interested parties or other difficulties that affected the company's ability to find a purchaser at the best price and the weight to be given to other valuation methodologies.*

137. At [138] of *Trina* (CICA) Birt JA noted that the other leading Delaware case (apart from *Dell*) on these issues is *DFC Global Corporation v Muirfield Value Partners LP,*[21] which emphasised the need for a "*robust market check*" with outreach to "*every logical buyer*".

[20] *Dell Inc v Magnetar Global Event Driven Master Fund Limited*, 177 A. 3d 1 (2017).
[21] 172 A. 3d 346 (2017)

138. The CICA also adopted dicta from another Delaware case, *Re Solera Holdings Inc*[22] which Birt JA identified as "*a helpful summary of some of the features to be looked for when considering whether weight should be placed on a merger price*" (at [139]).

139. The relevant passage from *Solera* is as follows:

> *"I now turn to my own independent determination of the fair value of Solera's shares with the guidance from DFC and Dell in mind. Those decisions teach that deal price is "the best evidence of fair value" when there was an "open process," meaning that the process is characterised by "objective indicia of reliability." Such "indicia" include but, consistent with the mandate of the appraisal statute to consider "all relevant factors," are not limited to:*
>
> • *"[R]obust public information," comprised of the stock price of a company with "a deep base of public shareholders, and highly active trading," and the views of "equity analysts, equity buyers, debt analysts, debt providers and others."*
>
> • *"[E]asy access to deeper, non-public information" where there is no discrimination between potential buyers and cooperation from management helps address any information asymmetries between potential buyers.*
>
> • *"[M]any parties with an incentive to make a profit had a chance to bid," meaning that there was a "robust market check" with "outreach to all logical buyers" and a go-shop characterised by "low barriers to entry" such that there is a realistic possibility of a topping bid.*
>
> • *[A] Special Committee "composed of independent, experienced directors and armed withthat (sic) power to say 'no'," which is advised by competent legal and financial advisors.*
>
> • *"[N]o conflicts related to the transactions," with the company purchased by a third party."*

[22] [2018] WL 3625644 (30 July 2018)

140. As to the last bullet-point, Birt JA said at *[140]* that

> *"I do not consider that the existence of any conflict of interest precludes absolutely any reliance on a merger price, but it certainly militates against such reliance".*

141. In relation to management buyouts, such as the case the Court is dealing with here, Birt JA said that:

> *"…there must, in my judgment, be heightened scrutiny in order to ensure that there is a realistic and fair opportunity for alternative bidders. Inevitably, in a management buyout, there is considerable scope for management to acquire the company on the cheap because of their detailed knowledge of the company as compared with the knowledge of ordinary shareholders and other potential bidders".*

142. The Court duly takes this on board as a matter which needs close analysis in this case.

143. If the transaction process is flawed, then, depending on the gravity of the flaws, reliance on the merger price may not be appropriate. As Birt JA put it in *Trina (CICA)* at *[136]:*

> *"The mere fact that there are flaws in the deal process does not of itself mean that the merger price cannot be given weight. It all depends on the gravity and nature of the flaws, although clearly the existence of any flaws raises a serious issue as to whether weight can still be placed on the merger price".*

144. Birt JA said at *[142]* that :

> *"…if the breaches are substantial, this is likely to mean that the merger price is not reliable as an indicator of fair value and that accordingly little or no weight should be given to the merger price when assessing fair value".*

Reliance on market price

145. In *Re Trina* Segal J suggested that the starting point in any valuation assessment should be the market trading price of the relevant stock.[23] He cited, with approval, the approach to the use of market trading prices in appraisal cases decided by the Courts of the State of Delaware[24].

146. In a subsequent decision, *iKang*, Segal J said:[25]

> *"*[t]*here is no hierarchy with respect to the valuation approaches which may be applied to determine fair value "*

147. This Court agrees that whilst the market trading price may be a logical starting point in the valuation analysis and it should give due weight to the fact that securities are listed on a major international exchange (as is the case here), there is no rigid hierarchy as to the application of methodologies to be applied.

148. Whether weight is to be given to a particular methodology (for example an adjusted market trading methodology) and whether, and if so what comparative weighting should be placed on that methodology and any other relevant valuation methodology that is considered to be applicable, will depend upon the particular circumstances of each case.[26]

149. The choice of methodology is an acutely fact sensitive exercise and will depend, for example, upon the type and stage of the business being valued, and in what market(s) its shares are being traded.

150. What the Court is looking for is the appropriateness and reliability of the particular methodology to give it the best information from which to determine fair value.

151. As was said in *FGL*[27]

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[23] §128
[24] *Dell v Magentar Global Master Fund*, 177 A.3d 1 (Del. 2017) and *DFC Global Corporation v. Muirfield Value Partners, L.P.* 172 A.3d 346 (Del. 2017)
[25] §37
[26] *Re Trina*, per, Birt JA at §[294]
[27] §265

"There is no presumption in Cayman law that markets are efficient, or that a market for a share at given time produces a trading price that approximates to fair value. Those matters must be proven on the facts of the case on the balance of probabilities."

The test for efficiency

152. In essence, the aim of an adjusted market trading price analysis is to estimate the trading price at the valuation date in the absence of a merger. This is because, after the announcement of a merger, the trading price is likely to be driven by the expected merger price, as opposed to the company fundamentals or intrinsic value.

153. Where an (adjusted) market trading price is said to be indicative of fair value the party which contends for it needs to demonstrate (on the balance of probabilities)[28] that the market for the relevant shares at the relevant time has been shown to have been 'semi-strong form' efficient. A semi-strong form efficient market is one in which the current market price incorporates information contained in the historical price movements and all other publicly available information.[29]

154. The Court will look for a cause-and-effect relationship between the release of new value-relevant information relating to a stock, and movements in the stock price.

155. In an efficient market, when unexpected information becomes available there should be a rapid reaction in the form of movement in the stock price which correlates with the unexpected information: i.e., the movement should reflect the unexpected information both directionally (an increase following positive news and, decrease following negative news) and in terms of magnitude.[30]

156. The other matter which needs to be proven is that there was no material non-public information ("MNPI") relevant to the value of the shares as at the relevant date.[31]

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[28] *iKang* [35] *Trina (GC)* [128]; *Trina (CICA)* [65]

[29] As was said by Segal J,at § 45 approving *Nord Anglia* at § 58 a market is 'semi-strong form efficient' if it fully reflects all public information and no significant changes in stock price would be expected on days where there is no new value-relevant information. This is contrasted with 'strong form' efficiency whereby the market price incorporates **all public and non-public** information.

[30] See, for example, the passage from Damodaran, "Investment Valuation" (2012) quoted in Professor Yilmaz's First Report para at §205

[31] *Re Trina* per Segal J at §[128] ;*Re Nord Anglia*, per Kawaley J at §[110]]; and *Re Trina*, per Birt JA in the CICA at §§[66] and [249]

157. In practice a Company is required to prove the absence of MNPI. It is not enough for it to show that it routinely made information public through its filings, analyst briefings, press releases and the like.[32]

158. As Kawaley J said in *Re Nord Anglia [109]*:

> *"The Company also argued that there was no MNPI because it gave regular briefings as required by the NYSE. I summarily reject that argument as the relevant question is not whether there was some disclosure of material information but the converse: was there some material information which was not publicly disclosed."*

159. As to the threshold for information to be 'material', in *FGL* the Court treated as "*a sensible working definition*", that information is material if it would have "*a significant impact on the trading decision of a reasonable investor*".[33] The Court adopts that test in this case as well.

160. If neither of these matters are proven, or there is some other reason why the use of the market trading price methodology cannot be considered to be reliable, the Court should look beyond a market trading price analysis to determine the fair value of a dissenter's share.[34]

161. Even in those circumstances, however, some assistance may be derived from the evidence provided by a market trading price based methodology with an appropriate weighting applied. Or it may serve as a useful 'cross check' and, if justified in relation to any specific MNPI, by a reasonable adjustment.

162. In *Re Qunar* the Court made the following observations on the facts of that case as regards the application of a market trading price methodology in the valuation of a company's stock under s.238 of the Act:

a. There is a long line of judicial support for the view that where a security is liquid and well traded, the market trading price provides strong evidence of value;[35]

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[32] *FGL Holdings* at §§[256], [266], [296].
[33] at §[326].
[34] Kawaley J *Nord Anglia* (at [110]) and in *Re Xingxuan* FSD 227 of 2017 (IKJ) (9 September 2024) at [52] "… where the relevant shares are listed and actively traded, the market price and/or the transaction price have considerable prominence"
[35] See *Integra Group* [2016 (1) CILR 192] at [58] and leading authorities from the Courts of the State of Delaware, namely: *Dell v Magentar Global Master Fund*, 177 A.3d 1 (Del. 2017) [15], [16], [17], *DFC Global Corporation v. Muirfield Value Partners LP* 172 A.3d 346 (Del 2017), pp. 369, 373, 367.
251121 In the matter of Sina Corporation – FSD 128 of 2021 (RPJ) Judgment

b. Where market participants can be seen to respond quickly to news and events and analysts and equity and debt providers expertly digest and analyse information in relation to the company in question, the market for the shares in the company can be described as being "semi-strong efficient" in nature - as had also been recognised in a number of cases decided in the State of Delaware.

c. That a market trading price methodology may also provide a good cross-check against any DCF analysis deployed to assess the fair value of the relevant shares.

163. In *Re FGL Holdings*, the Court concluded, on the specific facts of that case that the fair value of the dissenters' shares should be assessed solely by reference to the transaction / merger price.

164. Although, again on those specific facts, like Kawaley J in *Nord Anglia*, the Court did not adopt a market trading price based analysis to determine the fair value of the relevant shares, the Court did consider the principles in applying an efficient market hypothesis (EMH) based method to be as follows:

> "*283. … I accept …*[the] *expert view that market efficiency can be and usually is evaluated by empirical tests of how quickly the price of a security responds to new information, not by analysing whether market participants are rational or whether all information is available to all market participants…. As to empirical tests…, "event studies generally confirm that the adjustment of share prices to events is quick and complete".*
>
> *284. The semi-strong version of the EMH requires that all publicly available information (past and present) is fully reflected in securities' prices. A well-informed and liquid market with a large, widely held free float is also necessary…*
>
> *285. I accept … that the market for shares listed on the NYSE is semi-strong form efficient by reference to an analysis of the Cammer factors that are routinely used by US Courts to assess market efficiency and by conducting an event study…. In particular…* [accepting the expert evidence adduced by the company in that case]*…a "cause-and-effect relationship, over time, between "unexpected corporate events or*

> *financial releases and an immediate response in the stock price"" can be probative of efficiency.*
>
> *....*
>
> *286.* [The view of the company's expert witness was]*... that stocks traded on the NYSE are semi-strong efficient and if that is to be displaced one needs good empirical evidence with which to do so.*
>
> *288. I accept ...* [the] *expert view on this point and reject the Dissenters' argument that…*[the] *view is an 'unbalanced and absolutist' one in the context of appraisal case law in the Cayman Islands.*
>
> *....*
>
> *294. I therefore have accepted what may be said to be the orthodox expert view, that when the market for a security is efficient, market prices generally provide the best indication of fair value because transactions for securities listed on stock exchanges, such as the NYSE, are between willing buyers and sellers, under no compulsion to buy or sell, who, in an efficient market, are transacting at prices that reflect all publicly available information.*
>
> *295. This is because market prices reflect a collective view from the market often involving expert professionals and thousands… of participants and investors who are constantly assessing the future economic returns of holding a share. These participants follow companies within sectors very closely both with regard to their public financial outputs and filings and by interactions with company management through earnings calls and investor presentations."*

165. It follows that where the market for a company's shares can be seen to be semi-strong form efficient and the stock is well traded and liquid, an analysis based upon the market trading price for those shares may well be appropriate as a reliable contemporaneous and objective indicator of value.

166. It reflects the contemporaneous reality of the market where all publicly available information (past and present) is fully reflected in the share price. It is likely in those circumstances to provide a reliable assessment of the fair value of that stock, always assuming there is no MNPI which cannot properly be adjusted for.

167. The Court also needs to be sensitive to the fact that an alternative or additional income based methodology, such as a DCF analysis, may suffer from its own flaws or limitations, hindsight analysis and subjective inputs.

The real world

168. The Court also made the point in *Qunar* that a cross-check to the market price may be needed in order to bring the DCF valuation, "*back to the real world and prevailing commercial context".*

169. In *Re Nord Anglia,* while Kawaley J did not ultimately allocate any weighting to a market trading price-based analysis on the facts of that case, however he did make a similar comment that:

> *"the clear picture painted by the evidence overall points to the following broad conclusion. A DCF analysis should be given considerable weight in the Court's valuation process,* ***but not to an extent which generates a value which is significantly at variance with the Market Price, viewed together with the Transaction Price." (emphasis added)***

170. The Court would add a gloss to those comments in that if the Court places no reliance on the merger price or the adjusted market trading price for substantive reasons, a sense check with those prices may not be useful or appropriate.

Walk forward

171. A merger proposal is usually announced to the market some time prior to the Valuation Date. Therefore as at the Valuation Date the market price can be affected by the announcement of the proposed merger and the expectation that the company's shares may (or may not, if the transaction does not complete) be cancelled in exchange for the proposed merger price.

172. When assessing fair value, it is therefore necessary to estimate what the market price would likely have been on the Valuation Date but for the announcement of the merger, by 'walking forward' from the last unaffected trading day before the announcement.[36]

DCF and reliance on and adjustments to company projections

173. The nature of a DCF analysis was again helpfully explained by Segal J as follows[37]:

> *"The basic premise underlying the DCF methodology is that the value of a company is equal to the value of the projected future cash flows, discounted to the present value at the opportunity cost of capital. Calculating a DCF involves three steps: (1) one estimates the values of future cash flows for a discrete period, where possible based* on *contemporaneous management projections: (2) the value of the entity attributable to cash flows expected after the end of the discrete period must be estimated to produce a so-called terminal value, preferably using a perpetual growth model; (3) the value of the cash flows for the discrete period and the terminal value must be discounted back using the capital asset pricing model (CAPM). In simpler terms, the DCF method involves three basic components: (1) cash flow projections; (2) a discount rate; and (3) a terminal value."*

174. In *Re Qunar*, the Court observed:

> *"72. Fair value estimated using a DCF approach assesses the present value of the future cash flows a business is expected to generate over its remaining life. A discount rate is applied to those cash flows in order to turn them into a present capital value and identify how much it would have cost at the Valuation Date to buy an investment with a rate of return and risk profile equivalent to the business of the company.*
>
> *73. The DCF methodology can be an accurate measure of fair value. However, it depends on the reliability of the models/projections, the various assumptions, and the validity of the inputs. Even a slight difference in these inputs can produce large variances. It also relies on subjective judgments to a large extent and can be easily manipulated by applying certain assumptions in the context of litigation. As it is also something of an abstract concept, a cross-check may also*

[36] In *Re FGL Holdings* the Court found that the adjusted market price could not be relied upon where the 'walk-forward' was "speculative and inappropriate" (at [385]). .
[37] *Shanda:*§94 citing Parsons VC in *Merion* 2013 WL 3793896 9Del.Ch July 8 2013

be needed to bring a DCF valuation back to the "real world" and prevailing commercial context".

175. In a DCF valuation the company's cash flow projections are a critical component in the assessment.

176. In *Trina* at [188] Segal J suggested that the correct approach was as follows although, this was modified subsequently in one respect by the CICA:

> *"Accordingly, while each case depends on its facts and there are no rigid rules to be mechanically applied, the approach to be followed can be summarised as follows:*
>
> *(a) the Court's task is to determine the most realistic forecast of the Company's future performance for the purposes of the DCF valuation. As I said in Shanda, the Court is aiming to find projections that are reasonable and reliable in the circumstances (a case in which I was prepared to require adjustments to be made to the management projections).*
>
> *(b) the starting point is the general reliability test – have the management projections been prepared in good faith by a competent management team which understands the business and is capable of making informed judgements about future performance?*
>
> *(c) if the management projections satisfy this test, in the absence of some contemporaneous challenge to management's projections suggesting some serious failure in management's general approach to the preparation of projections, the Court must consider whether they have been shown to be obviously wrong, careless or tainted by an improper purpose (such as bias). There needs to be serious and material doubts as [to] the reasonableness and reliability of such projections.*
>
> *(d) this is because the Court should be cautious about allowing expert witnesses to substitute their judgments about the company's future business prospects for the judgments of those with intimate inside business knowledge – although the level of caution will depend on and vary with the issue in question and*

challenges made. Where the disputed adjustments are primarily dependent on questions of insider business judgment then the Court will be slow to displace management's assessment and forecast. Where the issues in dispute involve questions of expert valuation methodology, then the Court may be less deferential to management's approach;

(e) where there are competing valuation methodologies, the Court may give reduced weight to a DCF valuation based on management projections if it has serious concerns as to the reasonableness and reliability of those projections (either generally or in material respects);

(f) where the Court is considering particular items to be included in the DCF valuation (relating to a particular input to the DCF valuation based on an item in or aspect of a forecast) the Court can limit the weight to be attached to the item derived from the management projections if there are serious and material doubts as to the reasonableness and reliability of that item or aspect.

(g) management projections produced for the purpose of or in connection with the merger rather than being produced in the ordinary course of the company's operations, will need to be carefully scrutinised to ensure that they have not been influenced by, and constructed so as to facilitate, the merger."

177. In *Trina* (CICA) at [153]-[158] Birt JA largely endorsed this formulation, butheld that Segal J had set the bar too high for departing from a management forecast at [188(c)]:

"153. In my judgment, the judge articulated the test for departing from a forecast in management projections in terms which are too high, with its reference to only interfering if the forecast is shown to be '…obviously wrong, careless or tainted by an improper purpose'.

154. I accept that the judge adopted this expression from the judgment of Parker J in Qunar at [181]. However, I do not consider that Parker J was seeking to lay down a general test which should invariably be applied; he was also considering the matter in a case where there were no industry expert witnesses.

155. I agree with the judge that the starting point is to consider the general reliability test as stated at [188(b)]. Clearly, if that is not satisfied, the Court should be very cautious about placing too much weight on management projections. ***But, even if the general reliability test is satisfied, the Court's duty, as the judge correctly stated at [188(a)] is to determine the most realistic forecast of the company's future performance. That means that the Court must reach its own decision pursuant to its obligation to determine fair value****.*

156. I find helpful an observation of Kawaley J from Nord Anglia at [153] as follows: "But, it bears repeating, this [satisfaction of the general reliability test] does not exclude the need in the context of a judicial appraisal proceeding to test the accuracy of the estimates and make appropriate adjustments with a view to determining the most realistic forecast of the Company's future performance."

157. There must, of course, be some evidence before the Court to raise an issue as to the appropriateness of one or more assumptions or forecasts in the management projections before any question of departing from such projections arises. But once there is such evidence, the Court's duty is to reach its own decision. In doing so, it will of course give due weight to the knowledge and experience which the management team has of the company's business, but it must consider the evidence of both parties and reach its own decision on the most realistic forecast. ***It is wrong to say that the Court can only vary a forecast in management projections if it concludes that that forecast is obviously wrong, careless or tainted by an improper purpose. The Court may simply conclude that, even after making allowance for the knowledge and expertise of the management team and bearing in mind the cautionary words quoted above about allowing expert witnesses to substitute their views for those of management, an expert witness's views are to be preferred and that the best forecast is that put forward by the expert witness or lies somewhere between the management projections and that of the expert witness. If the Court reaches this conclusion, it must give effect to that conclusion when assessing fair value.***

158. Apart from sub-paragraph (c) of [188], the Dissenting Shareholders did not criticise the judge's summary in [188] and, for my part, I consider it to be a useful summary of the Court's approach."(emphasis added)

Knowledge and hindsight

178. In *Qunar* at [89], the Court held that it should look at all information as at the Valuation Date that is relevant to fair value. The exercise is not confined to information available to market participants at that time.

179. Further, while reliance on hindsight is normally precluded, that does not mean that events post-dating the Valuation Date should not be considered.

180. What matters is whether such subsequent events were foreseeable as at the Valuation Date, as the CICA in the present proceedings explained:

> "28. *Secondly, even where there is a material delay and a price sensitive event occurs between the EGM and the merger completion date, such event will often be reflected in the valuation even if the Valuation Date is as at the EGM. That is because, when valuing on a particular date, any valuer looks forward to see whether any event that might affect the profitability of the company in question is likely to occur in the foreseeable future. To take a simple example, if at a Valuation Date there is a general expectation in the market that the selling price of an item sold by a company is likely to increase substantially in the foreseeable future or the demand for such item will increase substantially, thereby increasing the profitability of the company, that would be reflected when valuing the company as at the Valuation Date. Conversely, if a totally unforeseeable event occurs after the Valuation Date, that event would not be taken into account when valuing the company as at the Valuation Date. The weight to be placed on a subsequent price sensitive event when valuing a company at a particular date will depend on the degree to which the event, as at the Valuation Date, would be considered likely.*
>
> *29. The essential point is that, unless the subsequent event is wholly unforeseen, a valuation as at a particular date will take the subsequent event into account to a greater or lesser extent. As Field JA put it during argument, if the subsequent event is due to causes which 'were at an early stage of fermentation' at the Valuation Date, valuers would be bound, when valuing as at the Valuation Date, to see whether there were indications of the subsequent event such that it should be taken into account when assessing the value of the company as at the Valuation Date."*

> *30. Transposing that to the present case, if the subsequent increase in the share price of Weibo was foreseeable as at the EGM, whether as a certainty, likely, possible or remotely possible, the increase would be taken into account when valuing as at the EGM, with the weight to be given to the increase to be determined by reference to the degree of likelihood as at the Valuation Date of the subsequent increase occurring."*

181. The CICA went on to explain that, applying this principle to a particular post-Valuation Date price-sensitive event, if the "seeds" of the event are "ascertainable" as at the Valuation Date then the event can be considered to such extent as the Court considers fair:

> *"90. In my judgment, on the basis of the material before the Court, there is no good reason to depart from the starting point of the EGM date in this case. If the increase in the Weibo shares was wholly unforeseeable as at the date of the EGM, I see no unfairness in the Dissenters not benefitting from that price increase. If, on the other hand, the seeds of the Weibo price increase were ascertainable as at the date of the EGM, then valuation as at the EGM can take this into account to such extent as the Court considers fair."*

The valuation issues in brief outline

182. The experts were both asked to assess the fair value of the Sina ordinary shares held by the Dissenters as of 23 December 2020, the date of the company's EGM (the Valuation Date).

183. They agreed that 2 July 2020 was the last date that the closing price of Sina's ordinary shares was unaffected by the pending announcement of the merger agreement on 6 July 2020 (the Announcement Date).

184. The experts both considered whether to apply valuation methods which relied upon the market trading price, the merger price, and a discounted cash flow analysis (DCF).[38]

[38] As outlined above a DCF calculation is based on the theory that the value of any financial asset is equal to the present value of its future cash flows. The present value is calculated by discounting the expected free cash flows at a rate that reflects both the time value of money and the risks inherent in the expected future cash flows. It can be used to estimate a company's operating business enterprise value by discounting the expected free cash flows (net of requisite reinvestment) available to all investors in the company, by the company's weighted average cost of capital (WACC).

185. Precedent transactions analysis and comparable companies' multiples analysis (including combinations thereof pursuant to a 'Sum of the Parts' (SOTP) method)[39] were also considered as approaches that might potentially be relevant to a determination of the fair value of the Dissenters' shares.

186. However, whilst assessing all these methodologies, the experts generally disagreed fundamentally as to the appropriate method of calculating fair value for any particular aspect of Sina's business and investments.

187. That has inevitably resulted in a great deal of close analysis of the expert evidence in order for the Court to reach its own view.

Mr Jaishankar's approach

188. Mr Jaishankar considered and applied three valuation methods: Sina's adjusted market trading price (AMTP); an analysis of the Merger Price; and a valuation of Sina pursuant to an SOTP analysis relying on an income approach.

189. He also concluded that a 42.5% 'HoldCo' discount should be applied in the circumstances of this case.

190. Since the market trading price already reflected, in his view, the market's understanding of the holding company structure of Sina, he did not apply an additional minority discount as it would result in a double count of that discount.

191. His application of a HoldCo discount was a contentious and significant issue in the case and which has not apparently featured in previous 'fair value' cases.

192. He accorded a 40 - 50% weighting on the results of his analysis under both the AMTP and SOTP analysis. The Merger Price was afforded only limited weight (10%).

193. He was of the view that Sina is largely a holding company wherein substantially all of its value flows from its long-term investments (LTIs) and its 44.7% ownership interest in Weibo.

[39] An SOTP analysis is a method for determining a company's worth by aggregating the value of its individual business segments and other assets to arrive at total value for the company. The value of each business segment is assessed by reference to what the valuer determines to be an appropriate approach for each (e.g., a DCF analysis or a market-based methodology)-see Jaishankar 1 §15.1

194. The Sina Standalone business did not, in his view, meaningfully contribute to the overall value of Sina, which when viewed in isolation was loss making.

195. He concluded that a comparable companies' analysis was not a reliable methodology in order to estimate the fair value of Sina, or indeed Weibo.

196. In Weibo's case a meaningful portion of its overall value, in his view, was also driven by the value of its LTIs and as a result he believed that inferring valuation metrics from an industry peer group for the purposes of application to either Sina or Weibo would require significant adjustments and would not be probative of fair value.

197. For similar reasons he also concluded that a precedent transactions analysis was not a reliable methodology in order to directly estimate the fair value of Sina and /or Weibo, but he did consider certain precedent transactions when assessing the fair value of the LTIs held by Sina and Weibo.

198. Mr Jaishankar concluded that the fair value of the Dissenters' shares is US$40.15 per share as at the Valuation Date by way of the following analysis:

a. by ascertaining the AMTP for Sina's shares as at the Valuation Date - US$37.20 - to which price he gives a 40%-50% weighting;

b. by reference to the Merger Price – US43.30 - and a consideration of the process by which the Merger Price was evaluated and accepted by the Special Committee, to which price he gives a 10% weighting on the basis that the process suffered from certain deficiencies and weaknesses and contained certain elements which limited the degree to which he could rely on the Merger Price as a robust indicator of the fair value of the Dissenters' shares; and

c. a valuation of Sina pursuant to an SOTP analysis of its business operations and its assets (based on an income approach and using the (Company's) Privatisation Projections) - US$42.41 - and to which price he gives a 40%-50% weighting in his process of assessment.

199. Mr Jaishankar's SOTP process can be summarised as follows:

i) A valuation of Weibo, employing a DCF methodology (adopting an income approach and using the Privatisation Projections) using a WACC of 11.87% together with a valuation of Weibo's LTIs by reference to either their book value or, where appropriate, using a market-based approach;[40]

ii) A "stand alone" valuation of Sina (excluding Weibo) comprising:

a. A valuation of the Company's business operations i.e., its Portal business and its Fintech business, adopting a DCF methodology (applying an income approach and using the (Company's) Privatisation Projections);

b. A valuation of Sina's LTIs (excluding Weibo) by reference to either their book value or, where appropriate, using a market-based approach;[41] and

c. specifically in relation Sina's 29.8% interest in TuSimple, by adopting the pricing per share used by TuSimple in its Series E financing round.[42]

Professor Yilmaz's approach

200. Professor Yilmaz concluded that the fair value of the Dissenters' shares was substantially more than Mr Jaishankar and was US$137.42 per share as at the Valuation Date.

201. He reaches this conclusion based on one valuation method, namely an SOTP valuation of Sina's assets (its Weibo stake, Sina Standalone, its investment in TuSimple, and its other LTIs).

202. He rejects other valuation methodologies (Sina's market price and the merger price) as inappropriate on the facts of this case.

203. Professor Yilmaz concludes that the merger suffered from significant deficiencies of process, making the merger price an unreliable indicator of fair value. He therefore assigns no weighting at all to it.

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[40]He calculated the business enterprise value of Weibo to be $6 billion with $2.7 billion being attributable to the Company. His WACC was 11.87% and he applied a terminal growth rate of 3.25%. He made adjustments to Weibo's business enterprise value to calculate an en bloc value of $8.5 billion with $3.8 billion being attributable to the Company.

[41] The experts agreed that the pro rata value of Sina's LTIs, excluding TuSimple, before taxes and discounts, was US$1.5 billion

[42] That was $14.14 per share to which he applied a 10% DLOM.

204. He is also of the view that no weight can be placed on the AMTP of Sina due to the market for Sina's shares being inefficient.

Weibo stake

205. Professor Yilmaz approaches the valuation of Sina's interest in Weibo by reference to his assessment of Weibo's market capitalisation, using the market trading price of Weibo in the trading window preceding the Valuation Date (i.e., on 22 December 2020) – US$45.94 (with a DCF cross check).

206. He is of the view that these shares traded in an efficient market and even though there might have been MNPI, to stay conservative he uses the stock price as the fair value. He says that his DCF cross check per share value of US$49.77 (which uses a WACC 8.01%) is slightly above but in line with Weibo's stock price as at the Valuation Date and that this is another indication that Weibo's value was efficiently reflected by its stock price.

207. Based on projections made by Weibo's management adjusted to reflect realised performance through 2020, he applies a perpetual growth rate of 3.3% (and a WACC of 8.01%) so that the enterprise value of its core business under his DCF method is $9.4 billion.

208. He then makes an adjustment to reflect the net cash that is available to shareholders as well as Weibo's LTIs which results in an equity valuation of $11.5 billion or $49.77 per share using a DCF methodology.

Other LTIs

209. As to his valuation of Sina's LTIs (not including TuSimple):

a. Four of Sina's LTIs are valued by reference to the market capitalisation of the relevant companies in which Sina has an investment interest;

b. the experts agreed that the pro rata value of Sina's LTIs, excluding TuSimple, before taxes and discounts, was US$1.5 billion; and

c. the remainder of Sina's LTIs are valued using their book value as recorded by Sina applying a 6% DLOM.

Investment in TuSimple

210. As to his valuation of Sina's investment in TuSimple:

a. he employs a comparable company / revenue multiples methodology by taking into account an "IPO scenario", to which Professor Yilmaz gives a 90% weighting in his process of assessment;[43] and

b. he adopts a "non-IPO scenario" valuation using the value for TuSimple implied from TuSimple's Series E financing round to which Professor Yilmaz gives a 10% weighting in his process of assessment.

Sina Standalone

211. Professor Yilmaz approaches a "stand alone" valuation of Sina's Portal business and its Fintech business (so excluding Weibo) based upon a company / revenue multiples methodology (with a DCF cross check).

212. Professor Yilmaz finds the Company's Privatisation Projections to be unreliable so does not use the DCF method of valuation. However he does perform a DCF cross check.

213. The multiples approach yields a positive value for the Company's standalone operations of $528m using a perpetual growth rate of 3.36 % for Fintech and 3.99% for Portal with a WACC of 8.18%.

214. Professor Yilmaz declines to apply any HoldCo discount to his valuation of Sina. Nor does he apply a size premium or a country risk premium as part of his methodology.

[43] He bases this on the fact that: the registration statement was filed for TuSimple's IPO and no more than 10% fail to go public having done so; he therefore attributes only a 10% weight to the non IPO scenario which he values using series E financing. The 90% IPO scenario under a multiples approach is $7.2 billion which he discounts back to the Valuation Date and applies a 20% IPO discount, as well as a DLOM which yields a value of $6.6 billion for TuSimple. A weighted value of $6.2 billion as at the Valuation Date given the Company's 29.8% stake in TuSimple represents $1.8 billion attributable to the company or $30.53 per share.

215. Instead he applies only what he says are scientific research-quantified discounts when valuing each of the parts reflecting specific economic value reductions or frictions, such as lack of marketability, IPO under pricing, and tax friction discounts, which add up to 4.13% of value or $362m -$5.90 per share.

Summary comparison of experts' positions

216. An at a glance summary of the experts' different positions is set out below:

	Mr Jaishankar	*Professor Yilmaz*
Conclusion	*$40.15*	*$137.42*
Sina's AMTP	*$37.20*	
	(45% weight)	*No weight*
Merger Price	*$43.30*	
	(*10%) weight*)	*No weight*

SOTP

Sina's interest in Weibo $3,837 million (DCF)		*$4,676 million (market price)*
Sina's stand-alone equity value (excl. LTIs)		
	(negative)-$1,181 million (DCF)	*$528 million (revenue multiple)*
Sina's LTIs (excl. Weibo,TuSimple)		
$1,074.4 million (market based with 10-30% DLOM)		*$1,371 million (market based with 6% DLOM to three investments)*
Sina's interest in TuSimple (pricing from series E financing)	*$702.6*	*$1,864 million (market based EV/revenue multiple)*
Sina's equity value	*$4,432 million*	*$8,438 million*
HoldCo discount	*42.5%*	*No HoldCo discount*
SOTP value per share	*$42.41 (45% weight)*	*$137.42 (100% weight)*

The Court's assessment of the evidence

Factual witnesses

Song Yi Zhang

217. Song Yi Zhang is a Yale educated former investment banker who had spent time with Morgan Stanley.

218. The Court found him to be a straightforward, open and frank witness.

219. He was a director of Sina from April 2004 - March 2021. He served with Yan Wang and Yichen Zhang on the Special Committee. He was also a member of the Audit Committee.

220. He is a highly experienced businessman within the internet industry. He also has knowledge of the wider business environment and community in China.

221. Apart from restricted shares held by him in Sina as compensation for his work at Sina[44], he held no shares in either of Weibo or Sina that he had purchased himself directly, because of his role as an independent director. Neither did he own shares or bonds in TuSimple.[45]

Market check and go shop

222. He gave evidence about the operation of the Special Committee (of which he was Chair) in an undefensive and open way.

223. His approach is neatly summarised in an email to a member of his staff at Mandra Capital when responding to comments contained in a "pitch deck" prepared by Duff & Phelps for the purposes of their seeking an appointment as financial advisers to the Special Committee.

224. Song Yi Zhang commented:

> *"As for market check/go-shop, I again don't think its relevant here. Charles' stake has a blocking vote, so no other offer can go through if he blocks; therefore, we will receive*

[44] {Day3/128:1}
[45] {Day3/128:1} - {Day3/128:16}

no real or serious outside offers. Further, Sina is a media company; the regulators won't approve just any buyer. Similarly, if Tencent goes and makes a bid on Facebook and the latter's board approves it, do you think the U.S. government will allow it to happen? I think the most important thing for the [Special Committee] to determine is if the offer price is fair."

225. The Court finds that this is a good summary of his view at the time, which he honestly held, and which he confirmed in his evidence.

Conflicts of interest

226. As to his loyalties to Mr Chao the following exchange is relevant

"JUSTICE PARKER: It's been suggested that your loyalties to him and your acquiescence or your approval of the subscriptions, the incentive subscriptions that Mr Lowe was asking you questions about, might have compromised your independence and objectivity on the Special Committee. I just wanted to hear again what your reaction to that [is] –

A. That's absolutely baseless. As I was trying to say earlier, but I didn't finish, I did not even support Mr Chao's elevation to be the CEO of the company. In fact, I was the only director that raised a lot of questions which turned out that the other directors were right to make him – to recommend him to be the CEO because I had the worries that he was trained as an accountant. Whether he was the best candidate to run Sina.

But I was convinced by the other board members and, as I said, also when he proposed to start Weibo, although the board was unanimous in supporting him because we could see already that Sina's portal business is facing a lot of competition and revenues were not growing, and Weibo would be the first twitter like entity in China and could be very valuable.

But five years into – four years plus into Weibo, the company had spent $500 million and I was really worried on the board and repeatedly raised issues with Mr Chao. But he powered on and got eventually now it realised into the entity that he thought it would

turn into, and created a lot of value for shareholders. So like we wanted to incentivise him to keep his like innovation, his entrepreneurship. So that was the motives of granting the shares."[46]

227. The Court accepts that evidence.

2015 issuance of preference shares

228. Song Yi Zhang said in relation to the 2015 issuance of 11 million Sina shares to Charles Chao, that this was done in the best interests of Sina because having Mr Chao incentivised and willing to make his own investment into Sina and its future was a real benefit for Sina.

229. For the CEO to inject cash into the Company and take a risk by borrowing money to buy more shares illustrated in his view Mr Chao's commitment and his faith in the business to Sina and Weibo shareholders.[47]

230. The Court accepts his evidence. He also said:

"A. I have no personal interest in this transaction. So there's no reason why I want to do Mr Chao a favour. He is not a personal or family friend. We did this because this is in the interests of the company, of all the shareholders. We wanted to retain Mr Chao. We wanted him to work really hard for the company, to make money for all the shareholders. And he made a lot of money for shareholders because he built Weibo at, like, a lot of -- when the board had a lot of scepticism about spending so much money on Weibo. He told us this very clearly, I remember, that: Sina's future is in this thing that we're going to do. And that's when I kind of like rolled over and agreed to support. Initially, I didn't support that[48]

231. The suggestion that the share transaction was arranged to allow Mr Chao to buy shares on unduly favourable terms[49] was not accepted by Song Yi Zhang.

[46] {Day3/131:7} - {Day3/132:13}
[47] {Day3/60:17} - {Day3/61:19}
[48] {Day3/66:18} - {Day3/67:6}
[49] {Day3/65:22} - {Day3/67:2}

232. Song Yi Zhang confirmed that in the event that Sina's share price had reduced in value, Mr Chao would still have had to complete the transaction.[50]

233. The Court has no reason to doubt that was the case and accepts his evidence.

Aristeia

234. Song Yi Zhang was also a member of the strategic evaluation sub-committee (SESC) in the Aristeia proxy battle. Song Yi Zhang's evidence, which the Court again accepts, was that the preference shares which conferred super voting rights to Mr Chao were issued for good reasons which prevailed at the time.

235. Song Yi Zhang said that the Company's Articles allowed for the preference shares to be issued by way of a decision of the Board, and there was no need for shareholders to be involved.[51] They took external legal advice on the proposed allotment.

236. The advice was *inter alia* that the Articles allowed a new class of shares to be created with super voting rights if the directors exercised their powers for a proper purpose and in the best interests of the Company as a whole.

237. The advice confirmed that there was no need to seek authority or approval from Sina's shareholders.

238. When pressed about this he said the reasons for not putting the proposal to an EGM were that *"it would require a lot of effort"*, and that there was *"a risk that it wouldn't get approved, and we don't want to take that risk[52]'*.

239. Whilst this received some adverse comment in relation to 'corporate democracy' in the media, for example in the Wall Street Journal,[53] Song Yi Zhang said that it was considered by the Board to be in the best interests of the Company and for all of its shareholders as a whole for the preference shares to be issued.

[50] {Day3/64:15} - {Day3/64:24}
[51] {Day3/76:22} – {Day3/77:5}.
[52] {Day3/78:10} – {Day3/79:10}.
[53] 9 November 2017

240. Whilst there was no overall majority shareholder, the Company was vulnerable, lacked stability and had been the subject of a great deal of speculation and unwelcome approaches creating instability.

241. Song Yi Zhang said:

> *"A….because people think that this company is like a sitting duck. And we think that that is not good for the company and for the shareholders as a whole. The company needs to have stability to ward off all these, like, unwanted solicitations…"*[54]

242. He said that making Mr Chao the controlling shareholder (in terms of voting power) was desirable in addressing any concerns the PRC government and regulators might have as to issues of stability and control.

243. The Court accepts that Weibo and Sina were prominent players in the PRC media/internet industries and would have been naturally under scrutiny by the PRC Government and its regulators.

244. The Court accepts Song Yi Zhang's evidence and that the Board believed that cutting off the opportunity for further public proxy fights was seen by the Board as a desirable outcome which would assist Sina's stability for the benefit of all its shareholders.[55]

245. The Court finally accepts that Song Yi Zhang gave a straightforward account of the risks facing the Company from the activist shareholder intervention by Aristeia and the measures taken in response which the Board regarded as necessary to stave off any further "*unwanted solicitations*"', as he put it.

Yichen Zhang

246. Yichen Zhang was an independent director of Sina and a member of the Special Committee. He graduated from the Massachusetts Institute of Technology (MIT) in 1986 and has more than 30 years' experience in the private equity industry and in capital markets. He is the Chairman and CEO of CITIC Capital, often described as "China's Blackstone".

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[54] {Day3/77:11} - {Day3/77:21}
[55] {Day3/133:1} - {Day3/133:8}

247. He also was a member of the Eleventh, Twelfth, Thirteenth and Fourteenth National Committee of the Chinese Political Consultative Conference and Senior Vice Chairman of the Centre for China and Globalisation. He confirmed in his evidence that he served *"...on the government advisory council, and I'm the only one from the investment industry, and I have served since 2008"*.[56]

248. This was regarded highly during the 2017 proxy fight involving Aristeia where ISS, a proxy advisory firm, recommended that shareholders should vote in favour of retaining Yichen Zhang as a director of Sina.

249. He came across to the Court as a highly intelligent, sophisticated and straightforward witness. He is a trusted and prominent figure in the investment industry in the PRC.

Conflicts

250. The Court accepts that he did not allow his personal relationship with Mr Chao, built over many years, to unduly influence any of his decisions relevant to this case. As he said:

> *"A. I don't -- you know, if you -- if I serve on the board for that many years, and also I know a lot of people in the commercial world in China, I know literally the head of every internet company, and I know their family also, that doesn't mean I'm not -- I'm no longer independent."*[57]

Alternative transactions and bids

251. Given his membership since 2008 on the PRC government's Advisory Council which convenes quarterly meetings with the economic ministers in the PRC to advise on and develop economic policies, his evidence in relation to the feasibility of conducting market checks, alternative transactions and the risk of government intervention was of particular assistance to the Court.

252. There is no reason to doubt his evidence that he is personally well able to advise on these types of issues.[58]

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[56] {Day4/53:1} – {Day4/53:3}
[57] {Day4/38:6} - {Day4/38:10}
[58] {Day4/53:7} - {Day4/53:9}

253. Yichen Zhang (consistent with the evidence to the same effect from Song Yi Zhang) explained that the Special Committee had discussed the nature and possibility of alternative transactions. However, all the alternative transactions they had discussed involved a change of control.

254. On the basis of his experience, in particular from his interactions and previous meetings with the PRC regulators, he knew that the regulators / the PRC Government would not approve any change of control of a major media asset in China. In the present case this meant either or both Sina and Weibo.[59] The Court accepts this evidence.

255. He also referred to a discussion of the possibility of an alternative transaction with Alibaba which he had in private following the making of the merger proposal. Alibaba had apparently made it clear that it did not want to become involved:

> *"A. So if you distribute more than 15%, Sina will own less than Alibaba. Alibaba had 31%.*
>
> *Q. Well –*
>
> *A. So, you know, we have tried to distribute shares to close the gap on the back of the proxy fight. We did two things. One was share repurchase. We did it for --I don't know. The programme at the time was 3,500 million. I believe the total we bought roughly was 4.1 billion shares since Weibo's IPO. And the second was actually distributing Weibo shares. We distributed total roughly -- I don't remember, but less than 10% shares.*
>
> *Q. Okay.*
>
> *A. And the results, honestly, you know, the holding company discount did not actually narrow. So --*
>
> *Q. You could –*

[59] {Day4/52:21} - {Day4/57:15}

A. Anyway, so I don't -- I don't think how that's really going to help, you know, the Sina shareholders

.

Q. Well, to restructure the company would have involved Alibaba's agreement and it would have involved the regulator's agreement; correct?

A. Yes.

Q. Did anyone ask Alibaba about whether or not you could restructure the company along these lines?

A. Alibaba's CEO was on the board of Weibo.

Q. Yes.

A. He was aware of everything that was going on. So –

Q. But did you ask him -- did you ask Morgan Stanley to approach him to perhaps participate in a restructuring of Sina's interest?

A. I did not specifically ask Morgan Stanley to do that, but it was well understood from Alibaba that they have no interest. They are not -- they already feel tenuous in their position in media, okay. If you look at it, subsequently -- I mean, our take-private happened. When it finished, in December of 2020, they were already feeling the pressure from the government --

Q. Yes.

A. -- even before that. So --

Q. You needn't have increased --

A. So they are asked to cut down all their shareholdings in media. The only thing they were allowed to keep was South China Morning Post and Weibo, because – simply because Weibo shares, nobody else was going to take it.

Q. But it didn't need them to buy -- that is not what I'm suggesting. I'm suggesting --

A. Yes, but they don't want to increase their prominence in the overall structure.

Q. But they were already in Weibo --

A. If you ask me have we -- had I or the Special Committee instructed Morgan Stanley to approach them, the answer is no.

Q. That's --

A. But if -- I actually personally had talks, not with Jack Ma, but with the CEO, with Daniel then, you know, and even -- it wasn't specifically suggesting, you know, we do distribution. It was just that, okay, what do you think about the privatisation and your position and all that. He said, "We don't want to touch anything, just leave us alone".

Q. So you went and talked to Alibaba?

A. It was in private, yes. I know -- all these guys are my friends. It was in passing I mentioned to them."[60]

256. Furthermore, he confirmed that the regulators / the PRC Government would never have approved such a transaction.[61]

Significant defects

257. However, whilst the Court accepts Song Yi Zhang and Yichen Zhang's view of the inutility of the 'go shop' and market checks process for the reasons they gave, this is not a good answer to the significant defect in a process which should allow methods of alternative price discovery in the context of reliance on the merger price (see below).

[60] {Day4/59:21} – {Day4/62:8}
[61] {Day4/31:17} – {Day4/64:2}

258. Whilst embarking on any such process may not have been likely to have resulted in an increase in the price per share in Sina above that represented by the merger price, that does not mean the process did not suffer from a significant flaw so as to call into question reliance on the merger price.

259. Without a market check one could not properly answer the question whether the process would have resulted in the discovery of a price materially different to the merger price.

Portal

260. Yichen Zhang also gave some evidence which was of assistance on the loss-making Portal business which the Court accepts. Yichen Zhang explained that though it was loss-making and was expected to continue to be loss-making, it did have value because Portal attracted traffic, and once traffic as generated comes in, it could be channelled into Sina's other business segments.[62]

261. Other companies in China in a similar position had kept their loss-making portals open.[63]

262. He said that, effectively, appearances matter:

> *"A. You don't -- at a small loss or loss that's bearable, you don't shut it down. Because if you shut Sina down as the portal, you think about the doubts people start to have about Weibo, whether to continue to use it. You know, are you going to go bankrupt as well? So it's for media influence reasons"*

Preference shares to Mr Chao

263. His evidence on the allocation to Mr Chao of the preference shares was consistent with that given by Song Yi Zhang:

> *"Q. And certainly you agreed that Mr -- Mr Chao deserved to have these shares allocated, and that's because you were supporters of him on the board?*

[62] {Day4/10:17} – {Day4/13:19}
[63] {Day4/11:1} – {Day4/11:15}

A. Which shares?

Q. This is talking about the shares that had been allocated in 2015 and 2009, and Mr – [Zh]Yan is saying that he thought that was a good thing, and you agree with him effectively?

A. Absolutely. In any company, if -- you know, CEO or senior management want to put up their own money to buy company shares at market price, to, you know, increase interest alignment with shareholders, that's a good thing.[64]

264. He confirmed that the Company issued the Preference Shares to Mr Chao because it trusted him as CEO to exercise that vote in accordance with the interests of the Company.[65]

265. The Court accepts his evidence.

Independence

266. The Court does not accept that his role at Sina was compromised because of CITIC Capital's co-investments with Sina. He dealt straightforwardly and in a credible way with all the suggestions made that certain projects would have given him a conflict of interest or reason to favour Sina.

267. The Court accepts that as CITIC Capital was one of the most prominent investment management companies in China and Sina was a major investor operating in the same geographical market, it is not surprising for Sina and CITIC Capital to have explored investment opportunities from time to time.

268. As Yichen Zhang said:

"Q. And it was common for CITIC to give introductions like this to -- profit opportunities, to Sina?

[64] {Day4/36:10} – {Day4/36:22}
[65] {Day4/40:1} – {Day4/40:4}

A. Not that common in the sense that we are a large asset management, investment management company, and we do a lot of investment. So in the -- the ones you listed, which I don't know if it's exhaustive, but in my -- based on best of my recollection, these are probably all. So you talk -- you count total three or four, and they are a major investor in China, a major investment manager, and at least in all these cases you mentioned, they approached me for --

Q. Right.

A. -- for opportunities. So, you know, that's -- I wouldn't call that common[66]

269. Mr Chao's evidence was to the same effect regarding the investment made by CITIC in the 2009 share issuance to Mr Chao:

"JUSTICE PARKER: Thank you for that context. I think what was being suggested to you was that because of his influence at CITIC, Yichen Zhang in some way was doing a favour by arranging this financing for you.

A. Yes. I don't agree.

JUSTICE PARKER: So if you could -- thank you for the context. If you could answer that.

A. But I just -- the context will help you to understand.
JUSTICE PARKER: I understand that, but what's the answer to that suggestion? It wasn't a favour –

A. No, it's not a favour. It's hard to say, because they made money. So I don't know it's my favour to them or their favour to me".[67]

270. The Court also accepts Yichen Zhang's evidence that as to the Limited Partner interests in CITIC's funds, those were commercial investments made by Sina in the ordinary course of business. These were highly regarded funds which were over-subscribed. Yichen Zhang said

[66] {Day4/22:15} – {Day4/23:3}
[67] {Day4/102:25} - {Day4/103:13}

that the opportunity to participate should not be viewed as any favour to Sina,[68] which the Courts accepts.

2009 and 2015 share purchases

271. The Court also accepts Yichen Zhang's evidence in relation to the share subscriptions in 2009 and 2015. He confirmed that the purpose of the subscription in 2009 was to ensure that Mr Chao was entrenched in the business, had an incentive to carry on, and had a significant number of shares in the Company.

272. He considered that it created an interest alignment between the Company and its management. At that time Weibo had just been launched by Mr Chao, so the Board was supportive when Mr Chao wanted to buy shares at market price.

273. The Court accepts his evidence.

274. Yichen Zhang also said that over 10 years before the take-private proposal, Mr Chao invited three major funds in China, CITIC Capital, Sequoia China, and FountainVest, to invest.

275. Mr Chao sold some of the shares to repay the funders in 2012/2013. The funders had been pressuring Mr Chao to sell the shares as the share price had gone up and they wanted to realise their profit:

> *"A. Yes, except he doesn't have the whole money. So he invited. So he invited three top funds, which is us, CITIC Capital, Sequoia China, and FountainVest. So all three of us invested, but we give the voting rights to him. So that he would had better control. You know, the investment went really well. In -- so we invested in 2009. By 2013, we completely exited. It was actually because of pressure from us as financial investors, because the share price has gone up three times. And as a financial investor, seeing Weibo perform really well, and we thought that was the time to take profit. Now, Charles was very reluctant, but he also feels that he is somewhat obligated to us because we backed him, and if this goes up, we didn't make -- in the end it comes back down again, it doesn't make money, and he would -- you know, it would be very difficult for him to face us. So he reluctantly sold it, so repaid us back."*[68]

[68] {Day4/18:2} - {Day4/18:10}
[68] {Day4/25:11} - {Day4/26:14}

Special Committee

276. It was put to Yichen Zhang in cross examination that they had sought to influence Morgan Stanley's valuation of the Company downwards for the purposes of its Fairness Opinion.

277. An internal Morgan Stanley communication on 31 August 2020 says:

> *"…Sandra has called three times since Friday…Long story short, sounds lie the SC[Special Committee] thinks our range is too wide and has been sent to pass along some messages around valuation… Show World – still too high…TuSimple – she thinks it should be carried at book value which I disagreed given we are already conservatively valuing this at latest round of valuation despite market rumour on its latest valuation and IPO in 2021 Q1 in the range of $3.5 – 7.0Bn".*

278. Yichen Zhang confirmed that it was he who had instructed Sandra Zhang that Morgan Stanley's valuation was too high:

> "*Q. Okay. So, for example, she told Morgan Stanley that the valuation of the portal was too high because it didn't include the wind−down costs? A. Yes, I actually told her that.*
>
> *Q. Okay. And did you also tell her that TuSimple should be valued at book value rather than –*
>
> *A. Yes, because in my business, you know, I'm in the private equity business, that's how the value is −−*
>
> *Q. Yes.*
>
> *A. The valuation is done".*[69]

279. From this the Court infers Yichen Zhang was saying to Morgan Stanley Asia that if they were valuing the Portal business on the basis that it might be wound down (which was not the view

[69] {Day4/65:16-25}

of the management at the time), then the valuation would need to include the costs of such a winding down. He also was saying in relation to the LTIs, valuation at book value might be more appropriate than the basis of valuation being proposed.

280. The Court does not conclude from this exchange that this was an illegitimate intervention, or as was suggested by the Dissenters, that the integrity of the Special Committee was compromised or that they were seeking to improperly influence Morgan Stanley Asia to lower their value of Sina.

Mr Charles Chao

281. Mr Chao has been Sina's CEO for almost 19 years and its Chairman since 2012. He demonstrated an in-depth knowledge of the media and internet industry in China, as well as the businesses of Sina and Weibo.

282. He was a generally credible witness, although at times he launched into advocacy and gave the impression that the process of giving evidence and being cross examined was extremely frustrating to him, as no doubt it was. The Court found him to be a forceful personality who was not used to the constraints of giving evidence in adversarial proceedings.

283. He was at times combative when dealing with questions put to him by Leading Counsel(s) for the Dissenters and was keen to give the context/background before directly answering.

284. The Court did not find that his credibility suffered as a result of these characteristics.

285. The Court makes allowances for the fact that this was the first time that he has faced a trial of this nature and dimension and that the process of being cross examined was unfamiliar to him. The Court is also alive to the obvious fact that he is personally highly invested in the outcome of the case and held strong views about the merits.

286. He was therefore understandably anxious to give his own perspective.

287. However, at times in his enthusiasm to educate the Court as to the commercial and regulatory context and how it should approach the case, came at the expense of answering Leading Counsels' questions.

288. In that regard, whilst not being evasive, he sometimes departed from the time honoured traditions of a fact witness giving oral evidence in answer to questions.

289. Generally, the Court formed the impression that, although a forceful personality, driven by his own strongly held views in relation to the case, he was not seeking to mislead, evade or obfuscate in his evidence.

290. However, although generally a credible witness, at times his views were too 'absolutist,' admitting of no uncertainty or doubt which affected his credibility.

291. On particular issues his evidence and the Court's assessment is as follows.

2009 Share Issuance to Mr Chao

292. Mr Chao explained the rationale as follows:

> *"A. So if you look at the coverage of Sina at that time, it's all about Sina did not have a boss, did not have a controlling shareholder. That's why it's always unstable. That was the perception around the market. So in order for me to continue CEO role, I feel like I need to have some, you know, influence and control, or at least symbolically in the market. Because culture-wise, I can tell you, in China that if you are not a big shareholder, if I have all the power as CEO, even my employee don't regard me as -- say: you are not the boss, because you don't have the control. You don't have the shares. You are not big shareholder…So that actually give me some kind of enlightenment: oh, you can do that. So that's why I came back to share -- maybe I could do something like this myself, because without that kind of interest, it's very difficult. Because for internet -- it's not just the reason I just mentioned about the -- if you don't have control, you don't have influence. It's all about whether you can make a board long-term decision for the company. If you don't have long-term interest, you don't have the control."*[70]

293. The Court accepts that this accurately reflected his views at the time.

[70] {Day4/101:12} - {Day4/102:18}

Aristeia and the preference shares

294. As a result of the unwelcome intervention from Aristeia, which caused such a significant disturbance at the Company, it decided to issue the preference shares and allot them to Mr Chao.

295. The Court finds on the evidence as a whole that the reason for that was to 'steady the ship'. There was a perceived need for stronger stability and leadership. At the time Mr Chao was only a c.12% shareholder.

296. It was not therefore an attempt by Mr Chao himself to seize control of the Company, although he ended up as a result of the issuance having majority voting control.

297. His evidence on this aspect was:

> *"A. Because -- but our attorneys suggest that that's the only way we could do to prevent future this kind of, in our term, frivolous kind of attack against the company based on some, you know, very, very baseless claims. That's the only way to protect the company, to save the company from these kind of battles without getting into trouble in terms of business and also with the government. And at that time it was viewed as the only way the company could do as board members for their fiduciary duty to protect the company.*
>
> *Q. Well, the lawyers -- we know you took legal advice because we are going to look at some of it. The company took legal advice. But the lawyers are telling you what's legally possible. The idea of giving you control of Sina is your idea, Mr Chao.*
>
> *A. It was not my idea. It's the lawyers' suggestion. Preference shares -- the purpose of preference -- I was already the largest shareholder because we always had the poison pill in place since 2005. No other shareholder can surpass 10% of shareholding. So in some way we already have the largest shareholding in the company with the control of the management team, and we did not need, therefore, further control unless our lawyers suggest that's the only way we can protect the company's interest, and to kind of fulfil our fiduciary duty as directors and executives of the company"*[71]

[71] {Day4/129:6} – {Day4/130:6}

298. The Court accepts that it was the Company's decision, taken with the external lawyers' advice[72] to give Mr Chao voting control of Sina for the nominal amount of only US$7,150:

> *"Q. Okay. So just to conclude on the preference shares --well, in fact, first of all, I need to make the obvious point, Mr Chao, that in this episode, the preference share episode, standing back and looking at it, you have acquired control of SINA --*
>
> *A. That's correct.*
>
> *Q. -- for $7,150?*
>
> *A. Right."*[73]

299. The Directors had taken external advice as to their fiduciary obligations in this regard, and no doubt followed it.

300. The strategy the Company decided upon, with external legal advice, was to provide a voting mechanism by which Mr Chao was given a controlling interest which it believed would ensure that the Board's recommendation would be followed in any shareholder vote, undermining the prospect of any future proxy contest.

Shareholder approval

301. With regard to a lack of a shareholder vote and shareholder approval for the preference shares, Mr Chao reiterated the views of Song Yi and Yichen Zhang to the effect that the 'loopholes' in the then current Memorandum and Articles needed to be fixed as they:

> *"result [in] a lot of disruption to business, and we endanger company's operation in China in many, many aspects".*[74]

302. A shareholder vote was deemed unnecessary in the circumstances given the Board had the power to issue the preference shares under the specific terms of the Memorandum and Articles.

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[72] Skadden and Maples
[73] {Day4/152:17-24}
[74] {Day4/135:17} - {Day44/135:20}

303. The Court accepts Mr Chao's evidence.

304. Neither the Audit Committee Minutes nor the Board Minutes reference the decision not to obtain approval of shareholders. It would in hindsight have been more transparent had they done so.

305. The Audit Committee minute merely said:

> *"WHEREAS, to ensure the continued execution of the Company's sound business strategies and development plans and avoid costly, time-consuming and disruptive proxy contests in the future, the Board believes that it would be in the best interests of the Company and all of its shareholders for the Company to issue certain Class A Preference Shares with rights and features that are deemed appropriate by the Board."*

306. As to the resistance the Company put up to Aristeia's proposals he said:

> *"Q. Yes. So you resisted their proposals?*
>
> *A. We disagreed with their proposals, put it this way.*
>
> *Q. Well -- and you resisted them in the sense that you fought against them to persuade shareholders to vote against them?*
>
> *A. We have to, because it's value destruction for the -- disruption, destruction, for the shareholders.*
>
> *Q. Well, obviously that was your view --*
>
> *A. It's not just my view. It's the entire board's view. It's our experts' view and everybody's view in the company."*[75]

307. Mr Chao exercised his pre-existing voting rights in voting against Aristeia's proposals and their proffered nominees to the Board of the Company.

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[75] {Day4/109:3-13}

308. He said that, as to appointing a new independent director, he was of the view that none of the nominees proposed were suitably qualified. Having received a recommendation from ISS Special Situations Research the Board sought to appoint and nominate Mr. James Liang the founder of Ctrip (a China based Internet travel agency platform).[76] The Court has no reason to gainsay that evidence.

309. He said it was his responsibility (and his right) as a member of the Board and as a shareholder of the Company to participate in the vote. He also said that his understanding was that there was no legal or corporate governance requirement that would have necessitated him from recusing himself from such a critical vote for the Company.

310. The Court accepts that this was his view at the time based on advice which he received. The Court accepts that this was also the view of the SESC and the Board at the time.

311. Song Yi Zhang and Yichen Zhang were clear that by giving him control in these circumstances he was also incentivized to continue to develop the businesses and stay with the Company to provide the innovation and drive necessary to develop the businesses in the PRC.

Mr Chao's professional relationship with Bonnie Zhang

312. It was suggested to Mr Chao that he and Bonnie Zhang (CFO) had an understanding or arrangement that in the event the Merger was completed successfully, Bonnie Zhang would be rewarded by her interest in New Wave.

313. Bonnie Zhang also had a dual-role throughout the merger process. She was the CFO of the Company and also assisted Mr Chao as a representative of the Buyer Group.

314. Mr Chao denied that Bonnie Zhang was compromised by this arrangement.[77]

315. The Court accepts his evidence, having also considered the evidence of Bonnie Zhang.

[76] {Day4/120:24} - {Day4/121:6}
[77] {Day4/84:5} - {Day4/84:16}

Bonnie Zhang's interest in New Wave

316. In cross examination he was shown SEC filings which they had each approved or signed which showed that Bonnie Zhang was an existing shareholder in New Wave.

317. The Court does not conclude from his evidence, which at times suggested that the filings were 'mistaken' and that he had 'relied on his legal counsel without checking their accuracy', was intended to mislead or obfuscate. The Court accepts that his recollection was not good on this issue.

318. He was asked whether Bonnie Zhang was a beneficial owner in New Wave but did not appear on the register and he said this:

> "*I can neither confirm or deny that, because I don't know, because she was my understanding -- at the beginning, she was on, then they transferred shares to another person. So -- so if you think -- if she still have the economic benefit or not, you should ask her".*[78]

319. The Court is prepared to accept that he may not have recollected when he gave the shares to her (which was in fact in 2017) via her nominee. The Court does not conclude from his evidence that he was trying to disguise that fact.

The alleged conflict of interest of Bonnie Zhang

320. As to an alleged conflict of interest given her role as CFO of the Company and her work on behalf of the Buyer Group, Mr Chao's evidence was that Bonnnie Zhang was merely coordinating work streams and acting as a liaison for the Buyer Group, but was not a decision maker in the merger process.[79]

321. The Court accepts that evidence, having also considered the evidence of Bonnie Zhang.

322. The Court finds that she was effectively a 'go between' and understood her role to be such. She was naturally involved in the merger process as the Company's CFO. The additional assistance

[78] {Day5/72:9-16}.
[79] {Day4/85:18} - {Day4/86:10}

she provided to the Buyer Group and Mr Chao did not in the Court's view result in impropriety or conduct on her part which preferred the interests of the Buyer Group to those of the Company.

Alleged conflict of interest of Mr Chao

Purpose

323. The Court does not accept that the merger proposal was driven by Mr Chao for his own interests.

324. The Court accepts Mr Chao's evidence that he pursued his merger proposal to take the Company into private ownership on the basis that he believed it was in the best interests of the Company to secure its future.

325. The Court accepts that he was concerned to ensure that a downward trend in commercial fortunes, particularly in the Portal business, required some new strategies for the Company which might be difficult to achieve under the scrutiny of a public company structure.

Price

326. The Dissenters point out, as to timing, that the Sina share price was trading at a low point relative to where it had been in the previous two years.[80] However, the Court notes that there had been a decline in the share price of Sina and Weibo from 2018 to the date of the merger offer, and beyond.

327. There was in the Court's view a conflict of interest that existed between Mr Chao and the unaffiliated shareholders as to the price to be arrived at.

328. When he made the offer, in crude terms, he stood to gain far more financially by acquiring the c.86% of the shares he did not already own at a lower price, than he could have made by selling his c.14% shareholding at a higher price.

[80] {Day5/87:5}

329. Despite this, his evidence was that he had offered what he thought was more than the fair value for the Dissenters' shares and that would be tested by the Special Committee and then the shareholders at an EGM:

> *"Q. You accepted there was -- you had a personal economic incentive to pay as little as possible for Sina, but the Special Committee's duty was to ensure shareholders not affiliated to New Wave got a fair price.*
>
> *A. I guess you did not read my statement before you're posing this question. I made it very clear the purpose of my deal, my proposal. And it was never for the economic benefit. It was exactly for the interests of the company and for its future.*[81]
> ……..
>
> *"A. … my intention is to acquire other shares with a fair value. And if the independent committee decide it's not a fair value, it was not supported, they can reject that.*
> ..
> *… I intended, as I said in my offer, and I also explain in my statement, it was very clear that was only intended I want to buy this company. And I explained in my statement why I was the only one who could do that. And if the price is not supported and independent committee didn't like what I offer, they can reject it."*[82]

330. The Court accepts that the Special Committee was in theory free to reject the price offered.

331. However, at the same time it is undeniable that Mr Chao was naturally interested to pay a price that was as low as possible, albeit one which the Special Committee may have regarded as fair.

332. The Proxy Statement itself made clear (in so many words), members of the Buyer Group had interests in the merger that were different from, or additional to, those of the other shareholders by virtue of their continuing interest in the surviving company after completion.

333. The Buyer Group would be negotiating a transaction that would be favourable to itself rather than to the unaffiliated shareholders and did not negotiate with the goal of obtaining terms that were substantively or procedurally fair to those unaffiliated shareholders.

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[81] {Day5/26:16} - {Day5/26:24}
[82] {Day5/30:25} - {Day5/31:3}; and {Day5/31:24} - {Day5/32:5}

Weibo results

334. Mr Chao was also cross examined on the delay in releasing these results.

335. Sina's (and Weibo's) Q2 2020 earnings were not released to the market until 28 September 2020, the day the Merger Agreement was signed.

336. Mr Chao said that he was unaware of any deliberate attempt or decision by the Company to hold back the publication of the Weibo 2020 results until after the Merger Agreement had been signed.[83]

337. What is clear from the contemporaneous material is that the Buyer Group wanted the Merger signed before the results were released.

338. Mr Chao noted that Weibo's Q2 2020 results were reflected in Morgan Stanley's Fairness Opinion which he saw for the first time in October 2020, after the signing of the Merger Agreement.

339. When asked in re-examination if he was aware as to whether the Weibo Q2 2020 results were provided to the Special Committee in advance of the signing of the Merger Agreement, Mr Chao said that he was unaware of the process undertaken by the Special Committee:

> *"A. I did not. I mean, I was not part of any of that process for Special Committee and for the -- to put it in this way, for the fairness opinion, and before the agreement was signed. The first time I saw the fairness opinion was in the filing, I think, somewhere in October. And that's the first time I saw that, yes…And if I may add that it's about Q2 actual were reflected in the Morgan Stanley -- I only knew that in-- after I seen the forecast provided by the company for the fairness opinion, right? Way after the, you know, the Morgan Stanley fairness opinion was issued, basically".*[84]

340. The Special Committee itself wanted to see the earnings release to see whether the numbers were in line with the projections provided:

[83] {Day5/93:9} - {Day5/94:3}
[84] {Day6/14:4} - {Day6/14:20}

[Morgan Stanley e mail] "By way of an update here — Rich and Frank just spoke with Bonnie, please see below a few key points conveyed / discussed:

[…]

° Buyer consortium wants to sign the agreement ahead of results release for both Weibo and SINA (suspect their Q2 results may be quite good then) — this point is to be discussed with Gibson"[85]

…….

[Morgan Stanley e mail to SC] "One other topic that came up was the timing of the second quarter earnings release in relation to the potential signing of a merger agreement. The buyer is working under the assumption that the merger agreement will be signed prior to the second quarter earnings release. We indicated that we will seek both GDC [i.e. Gibson Dunn] and the Special Committee's input on the proposed sequence."[86]

……

[Gibson Dunne e mail] When will the second quarter earnings be released? Based on our experience, a merger agreement generally gets signed after earnings release, not before. That is because the SC would like to see whether the actual numbers are in line with the projections provided"

…..

[Morgan Stanley response]"Yes we agree with you and that's why we flagged it as a potential issue that we need to discuss on our side".[87]

341. Prior to the Special Committee meeting on 28 September 2020 at which the Merger was recommended, Morgan Stanley circulated "*for completeness…the latest drafts of the 2Q 2020 earnings release".* This referred to the Weibo's Q2 results, which had beaten analyst estimates for both earnings per share and revenue.

[85] Morgan Stanley email on 31 August 2020
[86] Morgan Stanley email to Special Committee on 1 September 2020
[87] Email from Gibson Dunn to Morgan Stanley, and their response

342. This was not put to Mr Chao ,presumably because he said that he did not know what was going on within the Special Committee, but the Dissenters fairly point out that the Special Committee itself, with knowledge of the results could have insisted that the merger agreement could not be concluded until after the results were released to the market ,which might have given them some leverage to seek to negotiate a higher price on the back of a stronger than expected performance.

343. The Court accepts that criticism of the process.

TuSimple

344. Mr Chao confirmed that Morgan Stanley Asia was working on the Merger and Morgan Stanley USA was working on the TuSimple IPO.

345. He said that he did not know anything about:

a) Morgan Stanley USA's engagement in TuSimple's various rounds of financing until Q4 2020;[88]

b) the TuSimple IPO or the confidential filing of the draft Form S-1 filing at the relevant time and was never advised of the same.

346. He said that he did not attend any TuSimple board meetings, nor had he taken part in any board discussions as a non-executive director. He did not consider himself part of TuSimple's management.[89]

347. The Court accepts that evidence, which has not been contradicted by any other evidence.

348. His said that in reality the IPO was inevitable for TuSimple given it had never produced any revenues. Without an IPO it would fail as a business.[90] That fits with other evidence from Bonnie Zhang and the contemporaneous material.

349. The timing and details of it are another matter.

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[88] {Day5/106:1} - {Day5/111:3}
[89] {Day5/102:19} - {Day5/103:6}
[90] {Day5/125:13} - {Day5/126:12}

350. He continued to deny any knowledge of the specifics of the timing of the IPO because the team who were progressing it was in the US. It was a new team that he did not know anything about. He said that he was simply a passive investor based in China. The China team heard about the IPO through a leak, but apart from that, he did not know how the IPO was progressing or the pricing.[91]

351. The Court accepts this evidence, again uncontradicted by any contemporaneous material.

352. Although several questionnaires were completed in his name relating to the TuSimple S-1 filing in July 2020, the Court accepts that Mr Chao allowed those questionnaires to be completed variously by members of in-house departments in the Company and external advisors and that he did not focus on them.

353. His evidence was that these were standardised documents which did not deserve his attention in relation to whether or not an IPO of TuSimple was being planned in the near future.

354. This also seems credible to the Court. The Court believes Mr Chao when he says he was unaware of the specific timing despite the lines of cross examination which sought to discredit his evidence.

355. The confidential filing of TuSimple's draft Form S-1 was made on 23 December 2020 but was made without approval of the TuSimple board, and was only ratified after the event.

356. Mr Chao also denied that he knew that the value of TuSimple must have been higher than the valuation of the Series E financing round and he said that the fact that there were numerous projections shows that they were being continually updated.

357. Again the Court accepts his evidence.

358. Mr Chao said that the TuSimple IPO pricing was always going to be uncertain until the IPO 'roadshow' process had been completed. Mr Chao also recollected that Morgan Stanley USA advised TuSimple to issue the Series E shares at a price that was around a 70% discount to the ultimate IPO price, due to the uncertainty of the IPO at that time in December 2020.[92] The Court also accepts that evidence.

[91] {Day5/130:4} - {Day5/131:21}
[92] {Day5/123:16} - {Day5/125:12}

359. The case the Dissenters advance that Mr Chao plainly must have known about and understood the essential components of TuSimple's IPO and its timing has not been made out.

Bonnie Zhang

360. Bonnie Zhang has been the CFO at Sina for 10 years and had been CFO at Weibo for a year prior to that. She has a deep understanding of the business operations of Sina.

361. The Court found her to be a credible senior business person. She had significant experience prior to Sina as an audit partner in Deloitte, Shanghai and as CFO at AdChina.

362. She is also an independent non-executive director of Swire Pacific Limited which holds a portfolio of market leading businesses worldwide.

363. She came across as straightforward, careful and intelligent.

Financial interest in Buyer group

364. She was challenged as to her motivations and incentives in relation to the merger.

365. As was elicited in cross examination, she had held shares in New Wave through a nominee since 2017.[93] She explained that as a US citizen, due to the sensitivity of the Company being a media company in China, the shares were held through a PRC national.[94]

366. Her evidence was that she had a small interest in New Wave (around 2.2%) which, because it had pre-existed the Merger, was not a reward for services rendered during the Merger process.[95]

367. Although she had not paid for the shares in New Wave, having been given them by Mr Chao, there was a 'mutual understanding' (between her and Mr Chao) that she had to continue to work for Sina in order to keep the shares.

368. She accepted that although prior to the merger she owned 2.2% of New Wave's c.14% economic interest in Sina, after the merger she, via New Wave, owned 2.2% of 100% of Sina.

[93] {Day6/40:20} – {Day6/41:23}.
[94] {Day6/41:7} - {Day6/44:10}
[95] {Day6/41:13} - {Day6/41:23}

369. The Dissenters say the consequence of this, even at Mr Jaishankar's pre-HoldCo discount[96] SOTP valuation of US$73.75 per share, is that her indirect interest in Sina after the merger would be worth US$48.7 million after accounting for the debt that New Wave took on to finance the acquisition.

370. The Dissenters say that gave her a real incentive to make sure the merger transaction completed, and at as low a price as possible.

371. Bonnie Zhang strongly denied that was the case. The Court having carefully considered her evidence is not satisfied that she allowed herself to be influenced by the alleged financial incentive to ensure the merger completed at the lowest possible price for Sina's shares.

372. The Court in making this assessment has examined with care the evidence she gave about this and the straightforward way she gave it.

373. Her response to the Dissenters' allegations was that she was also a shareholder in Sina and her shares were immediately cashed out at the merger price. She said she was in that regard, if anything, incentivized to seek a higher merger price.[97]

374. The Dissenters to counter this say that it was always in Bonnie Zhang's interest to have a low merger price because she was a net buyer of Sina's shares. Although she was a seller of 122,799 shares in Sina that she owned and would cash out at the merger price, through her ownership in New Wave, she was a buyer of 1.125 million shares in Sina.

375. This implies, say the Dissenters, that she was a net buyer of around 1 million shares of Sina, which suggests that her interest lay in keeping the merger price as low as possible. They say that for every US$1 increase in the merger price, Bonnie Zhang stood to make US$1 million less from the merger.

376. In response to this analysis Bonnie Zhang pointed out in her evidence that she had limited ability to exit from her New Wave interest into Sina.[98]

377. She explained that there was a significant impediment associated with her shareholding being in a private company.

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[96] The Dissenters say any HoldCo discount disappeared when the Company was taken private and so is irrelevant to the value of Bonnie Zhang's interest in the post-merger company.
[97] {Day6/50:3-6}, {Day6/111:2-10}.
[98] {Day6/50:3} - {Day6/50:15}

378. This would impair her ability to "exit" her interest in New Wave and the value at which any such "exit" could be achieved:

> *"Q. And so far as my calculations are concerned, you had a 2.2% interest in New Wave?*
>
> *A. Mm-hm.*
>
> *Q. Does that sound right?*
>
> *A. That is correct.*
>
> *Q. That's correct. Well, I'm sure you're a very financially literate person, Mrs Zhang; I'm sure you're aware -- you'll have run the numbers, I'm quite issue[sure], about your own interest. But in my calculations, even at the merger price of 43.30, your interest would have been worth about $8.4 million, your interest in Sina.*
>
> *A. I would like to see your calculation sort of logic here. The way I look at this calculation is if you assume 43.3 being the fair value, and calculate the value of Sina Group, that gets you somewhere about 2.6 billion or -- we can do the math. And here you have the financing, because this transaction is financed by bank loan for sure. That was over 1.3 billion. Mr Chao personally has contributed $400 million into the transaction. That is a liability, from a New Wave perspective owing to him. Then you have borrowing funds from Sina itself. That's another 400. So you look at, altogether, liability over $2.2 billion. So with the fair value -- the assets part, you have 2.6 or 2.8 billion. The difference is exactly the initial 13% or 12.6% New Wave has. So through the transaction, the shareholders, being the other shareholders of New Wave, are not financially -- are not significantly financially benefit from the transaction. Indeed, they are running the risk, because once you have the transaction, you become -- you are private company shareholders, and you're looking at a company that is no longer in a public flow. So their exit channel has been limited compared it was before. So you have to wait for distribution or dividends out for a potential exit, unless there will be a future M&A transaction could happen, which, you know, for this scenario, it's even harder,*

because we are a media company located in China. The M&A possibility is somewhat very remote. That would be my view.

.....

Q. And if we run the calculation not on the merger price but on Mr Jaishankar's valuation before his additional HoldCo discount because the HoldCo discount disappears when the company is privatised, his sum of the parts valuation was $73.75 a share, which would mean your 2.2 interest is worth in the region of 48.7 million?

A. No, your HoldCo discount -- you're assuming -- I think I will leave that to the expert to say. But for a private company, yes, you don't have a HoldCo discount, but you will have a very significant liquidity discount being a private company."[99]

379. The phrase a "*bird in the hand is worth two in the bush*" comes to mind when considering her explanation as to motivation and incentives.

380. Although her indirect interest in Sina through New Wave notionally increased substantially as a result of the Merger, the Court accepts that the economic value of her interest in New Wave was far from certain as New Wave was subject to a large amount of debt and risk.

381. The evidence shows that the Merger had been heavily financed through loan arrangements, so the down-side risk was also substantial if the Sina share price was not doing well. If the value of the Company decreased, the debt obligation incurred by New Wave would nevertheless remain (with interest continuing to accrue).[100]

382. She was paid the Merger Price for all her shares in Sina. Her vested options rights on the completion of the Merger (none of which 'rolled-over' into the successor company), awarded her a cash payout of more than US$5 million.

383. The Court accepts her evidence that her immediate and realisable interests in the merger were aligned with all 'non rollover' shareholders as she would have personally benefited from a higher price. Her realisable economic interest of value in relation to the merger was by reference

[99] {Day7/1:18} – {Day7/4:11}
[100] {Day6/51:6} - {Day6/52:1}

to the purchase by New Wave of her shares and her stock interests in Sina, none of which were rolled over into the new company.

384. As such, the Court accepts her evidence that her interests could fairly be said to be aligned with those of the unaffiliated shareholders in Sina to realise the highest price possible for the shares in Sina.

385. She explained this as follows:

> *"A. … I do have quite significant vested interest in Sina level through all the years' service, having Sina options and restrict the units vested at that time. So for me, the privatisation means immediate cashout of my shares in Sina right away. And I was not asked to roll over my shares along with Mr Chao's. So all my vested options in RSU were paid in the -- as a result of privatisation. So from an incentive perspective, you know, I'm very glad -- I would have liked to see a higher privatisation price, because I got paid immediately, you know, upon the closing of the transaction. However, for my shares in the New Wave, quite frankly, I'm not certain how I'm going to exit. This will be -- it's a private company, controlled by Mr Chao. I have no voting whatsoever to say in the organisation -- in that particular organisation. And to monetise your private company interest, that means you have to sell assets, and then layers of distribution of dividends can finally reach to a shareholder. And there's no such path has been designed or anticipated or planned any time."*[101]

Company privatisation projections

386. She was challenged as to the reliability of the projections.

387. Having heard her evidence and considered the projections the Court has not been persuaded by Professor Yilmaz's opinion that these projections were fundamentally deficient, were not prepared in accordance with the principles on forecasting to be found in the relevant literature. and could not be relied upon for the purposes of a DCF valuation.

[101] {Day6/49:19} - {Day6/50:15}

388. Bonnie Zhang said that during the process she reviewed and approved the Privatisation Projections but did not make adjustments or discuss the projections with Morgan Stanley Asia.[102]

389. The Court takes from her evidence that she reviewed the final results to ensure that they were reasonable, nothing out of the ordinary, and in-line with what she reasonably anticipated applying her professional judgment. This was based on her knowledge, understanding and experience of the Company's finances and operations.

390. She said this about her approach:

> *"A. I think I answered your question, that I do supervise the process.*
>
> *Q. You did supervise the process. Did you review and approve the figures themselves?*
>
> *A. I reviewed -- I reviewed the projection.*
>
> *Q. You reviewed the projection. Did you approve it?*
>
> *A. Yes. Yes, I'm the person, you know, reviewed and approved.*
>
> *Q. And did you review and approve the calculations, that is to say the spreadsheets that produced the projections? Did you review those?*
>
> *A. I reviewed the end results they prepared. I did not go through in details how they are being calculated.*
>
> *Q. So you didn't go -- did you go into the spreadsheets which underlay the financial projections? Did you do that at all?*
>
> *A. I looked at the final results they prepared. I did not go through the formulas, the details, you know, to check the number, whether these are -- you know, the number, how the number was calculated.*

[102] {Day6/46:22} - {Day6/49:8} and {Day6/108:1} - {Day6/108:14}

Q. So you didn't check how the numbers have been calculated, which is what I'm writing down. You're agreeing; yes?

A. Yes."[103]

391. Bonnie Zhang explained that the first year, the base year for the Privatisation Projections (2020), was completed using a bottom-up approach,[104] and all the subsequent years were forecasted on a linear basis with percentage increases following on from the base year estimate.

392. Given the difficulties associated with any financial forecasting the Company took the approach of using the market data, looking at the peer group's growth rate, and Sina's relative position in the market, then evaluating Sina's growth rate for the forecasted years.

393. She said:

"Q. So for the forecasts beyond your actuals of Q2/2020, you did not use a bottoms-up approach?

A. The –

Q. Bottom-up approach, I should say.

A. Yes, bottom-up approach. Yes, we considered that. But in reality, how -- the way we do bottom-up is you actually need to go into operation, speak to these people in the sales department that – you know, to look at your revenue growth drive, you look at your customer portfolio, and these are the -- and we are talking about subsequent two to five years, and these are salespeople, they have to look at their respective customers' demand. If we're in middle of 2020, how their customer would know their demand two years ahead? It's just virtually -- in reality, it's impossible to do that. That's why we do that with business leaders, look at the market data, and look at the peer group's growth

[103] {Day6/48:10} – {Day6/49:8}
[104] Which uses internal data and operational metrics to forecast revenue often relying on projections of customer demand and sales forecasts- See Koller

rate and our relative position in the market, try to figure out what will be our growth rate in the years to come. That's how things are being determined.

Q. The –

A. This is a complete different approach from year 1, where our, you know, operation department have very, I would say, detailed knowledge about their customer, how they are going to spend, how they are -- you know, what areas, which are big events they're going to spend, what does my customer portfolio look like, what is the new target customer has said -- has been set up in the KPI. So they have all the ground information to supply for bottom-up purpose."[105]

394. The Court also notes that the Company in answer to an Information Request (4(d)) had confirmed:

> *"The Privatisation Projections were developed based on the 2020 Base Forecast, updated with the then available actuals for Q1 and Q2 2020, with additional assumptions as to future growth and revenue, then costs etc. The assumptions built in went across subsequent years for projects which were extrapolated on a linear basis - not from a bottom-up approach, rather on a percentage increase basis"*[106]

395. The Court does not accept Professor Yilmaz's view that this was a fundamentally flawed approach.

396. The Court accepts his point that the Company's track record in producing one-year budgets may not be relevant to the question of whether its five-year, one-off Privatisation Projections are reliable.

397. However, there is no good evidence before the Court to suggest that there were any inappropriate assumptions made or that the percentage increase basis was wrong.

398. Bonnie Zhang said that she relied on her finance team led by the Company's finance director, Ms Ma, who had more than 10 years' experience of preparation of the annual budget and

[105] {Day6/168:21} - {Day6/170:1}
[106] {Day 6/167:11-18}

forecasts for the Company. She relied on her because Ms Ma understood the Company's operations and spoke to the operational personnel within the company regularly.

399. In addition, Bonnie Zhang said she was able to follow Ms Ma's train of thought from the spreadsheets she was taken to.[107]The Dissenters say that was mere speculation as she only reviewed the end results.

400. However, she said that she had reviewed the Privatisation Projections as a whole and confirmed that she was comfortable that the customer numbers were obtained from the operational personnel and the projections were in line with her understanding as to how the Company's operations were going at the time:

> *"A. Like I explained yesterday, you know, I did not go through the spreadsheet cell by cell for review purpose. My review process is more on a high-level trend perspective, to ensure the trend of the business is in line with my understanding how our operation was going on at that time. So if we respond -- you know, I can't comment why it's hard-coded, but the -- it doesn't mean the hard-coded number was wrong or unreasonable from my -- from my review perspective. We're talking about Portal business, which is -- has been in existence for over 20 years, and the person who are preparing the projections, our finance director, has been on her post for over 10 years. And this is the person -- let me finish. This is the person been doing annual budget, doing forecasts, and also routinely speak to the operation personnel on a constant basis. I would trust her judgment. It's far better or it's sufficient to deliver a quality forecast.*
>
> *Q. Well, she's not giving evidence and you are, and so far as you are saying or implying that these are reasonable figures, given your large -- your significant financial interest in the transaction, you will forgive me if we are not prepared to just go on your say-so. So going with what the documents say, we're right in our reading of these documents that those profit forecast numbers for 2021 and 2022 were not calculated in any spreadsheet. They're just typed in; correct?*
>
> *...*
>
> *A.* ***Can we go far right? What I have seen here, there is the thought train of the person while he -- while she is doing the calculation, there are certain assumptions she has put through and calculate that, and that -- I would assume she's been***

[107] {Day7/16:19} - {Day7/19:21}

> ***discussing these trend information with the business person or our ground staff. So just look at the far left. What you have shown, yes, it's a coded number. It might be the way she does her spreadsheet or that her habits -- I'm not going to be able to comment on that. However, while we reviewed this spreadsheet, I think you need a review in its entirety, not only look at the coded number, you look at the right -- the trend number, the different percentage. Here I could see a train of thoughts. And also, if you look at -- I know we talked about revenue yesterday. Apparently, she put through her number of customers, her ARPU number; and I'm pretty comfortable that her number of customers, these are the numbers she obtained from our operational personnel. And then she's sanity checked her ARPU figure, whether it's within her understanding of the business. So, for me, these are logic steps she's taking while doing the forecast. At the same time, she's looking at the reasonableness of the forecast, whether that it's in conformity with the business operation****."(emphasis added)*[104]

401. In the Court's view this demonstrates that a train of thought or 'workings' were discernible and Bonnie Zhang was not simply speculating as suggested by the Dissenters.

Role

402. As to her role in relation to the buyer group she confirmed that it was a liaison role between Mr Chao and the external advisors including Skadden, Morgan Stanley Asia and the Chinese banks that provided financing. She was not a negotiator of any of the terms relating to the transaction or a decision maker.[108]

403. She said when asked about the projections in this role:

> *"...*
> *Q. ... Was it not an uncomfortable situation, you being in charge or you supervising process of producing the projections when you were also doing so much work on the buyer side of the transaction?*

[104] {Day7/17:15} - {Day7/19:21}
[108] {Day6/97:22} - {Day6/98:8}; {Day6/77:11} - {Day6/78:20}; and {Day6/80:7} - {Day6/81:14}

> *A. I would not say uncomfortable. This is quite typical. You know, projection process for this company, it's not unique for this transaction. We do annual forecast or budgeting -- I won't say "forecast", budgeting on a very routine basis. And we also provide projections to rating agency on an annual or sometimes even semi-annual basis, since Weibo has obtained a rating from Moody's and S&P. But this is -- I wouldn't say -- not every day work, it's a quite standard work for the team to organise themselves to work on sets of budgets and/or projections, and I'm being the ultimate person responsible for the financial information. I do review the results, to ensure they are, for instance, reasonableness, there's nothing out of, you know, ordinary or strange that has -- would have caused any inconsistency to my understanding of the company's operation".*[109]

404. The Court accepts her evidence and finds that she was principally a 'go between' and took any decisions back to Mr Chao for him to make, as he confirmed in his evidence.

405. The case advanced by the Dissenters that the Privatisation Projections were subject to her conscious or unconscious bias and were not prepared diligently or in good faith has not been made out on the evidence.[110] The Court accepts her evidence that she regarded herself as essentially neutral in the transaction.[111]

Weibo results Q2 2020

406. She, like Mr Chao, refuted the suggestion that these financial results were intentionally delayed until after the signing of the Merger Agreement on 28 September 2020 because it was known that Weibo's results had outperformed expectations.

407. She also refuted the suggestion that the Buyer Group did not want anyone to have any reason to revisit the merger price or allow anyone the time to consider the Weibo results and seek to renegotiate the merger price.

[109] {Day6/109:6} - {Day6/110:2}, see also {Day7/16:19} - {Day7/18:8} and {Day7/20:19} - {Day7/21:2}
[110] §241 of the CCMOO Dissenters' Opening Submissions citing Professor Yilmaz's First Report at §440
[111] {Day6/109:5} – {Day6/111:18}

Delay

408. Her evidence[109] was to the effect that the financial closing process in relation to interim results takes time for public companies to complete. Historically, Sina and Weibo had always published their earnings releases at the same time. Given that Sina was undergoing a significant transaction, the finance department had the multiple tasks of preparing the Privatisation Projections, attending to Morgan Stanley Asia's various requests for information and data and, at the same time, of working on the preparing and finalising Weibo's and Sina's interim financial results for Q2 2020.

409. As a result, the finance department was not able to finalise the interim results in August as they had in previous years.

410. The Privatisation Projections provided to Morgan Stanley Asia contained the actual figures for the first half of 2020, and the finance department had also updated the July 2020 figures, so that Morgan Stanley Asia had the benefit of having Weibo's Q2 financial results.

411. The Company's finance team were taking the extra step to provide as much up to date material as possible. Morgan Stanley Asia and the Special Committee had the benefit of the draft Q2 results prior to the Special Committee's determination as to whether to recommend the Merger to the Board.

412. She also said that the Q2 2020 revenue results for Weibo only beat the analysts' consensus by 2% and in Weibo's Q2 earnings release, the Q3 2020 guidance provided by Weibo was actually lower than the consensus guidance for the same trading period for the third quarter.[112]

413. The Court has reached the view that whilst intentional delay has not been made out, there was a flaw in the process because the Special Committee had the results and could have insisted that the merger agreement could not be concluded until after they were released to the market, which might have given them some leverage to seek to negotiate a higher price on the back of stronger than expected results.

[109] {Day6/122:7} - {Day6/122:17}, {Day6/131:17} - {Day6/132:8} and {Day6/133:6} - {Day6/134:4}
[112] The effect of Weibo's Q2 2020 results was value neutral. See: {Day6/133:6} -{Day6/134:25}

Knowledge of TuSimple IPO, its timing and pricing

414. The Court is not satisfied on the evidence that she had knowledge of the timing of the IPO at the Valuation Date or what the likely pricing was going to be.

415. Bonnie Zhang confirmed that Sina had more than 80 investments at the time and she did not pay any particular attention to TuSimple over and above any other.[113]

416. She was asked to join the board of TuSimple [(as a non-executive director)] because of her English language skills and her status as a U.S. citizen.[114]

417. She said that she did not know by June 2020 that Morgan Stanley USA had been engaged to carry out the series E financing and she was not a director at that time.[115]

418. Her evidence was also that while she knew that TuSimple had aspirations to complete an IPO given that it was a 'cash burning' business and was reliant on continuous funding, she did not know when or whether a process had started or whether it would be successfully completed.[116]

419. The Court accepts her evidence as being a plausible and straightforward account of her knowledge. There is no other evidence to cast material doubt on her account.

Expert evidence

Mr Jaishankar - assessment of his evidence

420. Mr Jaishankar is a Managing Director at Kroll, in their Toronto office.

421. The Dissenters argue that his evidence lacked rigour, was insufficiently reasoned, and failed to subject the Company's assertions to the degree of independent scrutiny and analysis that is required of an independent expert witness.

422. The Court does not accept that characterisation. It finds that he gave largely balanced and clear evidence, albeit from a heavily slanted 'real world' practitioner standpoint.

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[113] {Day6/139:17} - {Day6/140:5}
[114] {Day6/140:9-17}
[115] {Day6/141:20} - {Day6/142:2}
[116] {Day6/144:18} - {Day6/146:19}

423. He is not an academic and relied on his experience in practice. He accepted that certain academic material cited by Professor Yilmaz (and by himself) was of assistance in considering the generalities of certain aspects of a valuation analysis.

424. However, in his view the 'real-world' practice of valuation and the fact specific details of the case should be given more weight than the valuation/economic theory.

425. For example, he was taken to task because he did not cite many academic texts. The following exchange illustrates this point when he was challenged that he had not carried out an analysis from an article he had cited;

> *"Q. Now, this data is not -- I mean, you haven't discussed this in any of your reports, either of your reports, and you haven't undertaken any quality analysis, like the factors that were adopted in the Asness model, have you?*
>
> *A. I have not. Just to be clear, Mr McQuater, I'm not an academic.*
>
> *Q. Yes. That kind of analysis would require time and care, wouldn't it?*
>
> *A. From the perspective of an academic, yes.*
>
> *Q. Or a practitioner trying to carry out the same analysis?*
>
> *A. Practitioners aren't looking to dissect this sort of statistical analysis, Mr McQuater."*[117]

426. In taking this approach the Court agrees with the Dissenters that there were certain issues upon which his evidence lacked sufficient empirical and research-based support.

427. The Court would characterise his approach to the valuation issues in this case generally as being that of a 'reasonable pragmatist'. Whilst the Court has departed from his views in certain important respects, he nevertheless in the Court's view gave independent, and useful evidence from a practitioner point of view.

[117] {Day11/35:9} - {Day11/35:20}

428. However in some respects, for example in relation to event studies, the personal experience on which he relied, was thin.

Experience in fair value matters

429. Mr Jaishankar informed the Court that he had been involved in four fair value appraisal matters in the Cayman Islands, all of which involved disputed Market Trading Price and DCF valuation analyses.[118] This was his first involvement as a 'testifying expert'.

Professor Yilmaz - assessment of his evidence

430. Professor Yilmaz is Professor of Finance at the Wharton School of the University of Pennsylvania. He holds the endowed Wharton Private Equity Chair.

431. By contrast to Mr Jaishankar, Professor Yilmaz brought considerable academic teaching experience to his valuation analysis, but perhaps less day to day practitioner valuation experience.

432. He gave expert evidence in the 58.com trial heard last year by the Chief Justice.

433. He is criticised by the Company for having no 'real world' valuation experience and for having an over theoretical approach.

434. However, he has some experience of valuation as a market participant, working first in a hedge fund and then designing investment products for retail and high net worth individuals.

435. His opinions were supported by extensive academic and empirical research. He had a sizeable team, consisting of six individuals, made up of academics, professors or research based employees, retained by Yilmaz Advisory Services, each of whom prepared drafts of his reports.[119]

436. Whilst he therefore delegated much of the "heavy lifting', he took responsibility for the final product and was well able to delve into and was across the *minutiae* when required.

[118] {Day11/129:9} - {Day11/129:11}
[119] {Day14/18:16} - {Day14/24:11}

437. The Court, contrary to the Company's case, did not find his views to be 'over theoretical' or outsourced to his team.

438. Rather they were opinions he took responsibility for. They were analytically rigorous, but sometimes, for example as the Court has found when it came to elements of his SOTP analysis, produced outcomes which were at variance with the operating reality of the relevant businesses.

439. He also in that context sometimes used methodologies which the Court has found to be inapposite or unreliable to the particular circumstance.

440. Whilst the Court has therefore departed from his views in some respects, he nevertheless, in the Court's view, gave independent evidence intending to assist the Court and generally did so with the authority and intellectual dexterity of a highly regarded academic.

441. The Company sought to characterise his evidence in relation to the independence of the Special Committee, the Company's knowledge of the TuSimple IPO, and its handling of the Aristeia proxy fight in 2017, as inappropriate and partisan.

442. The Company argued that he unreasonably attempted to justify the evidence he gave, which supported the Dissenters' case on these issues, on the basis that he was giving a view as an economist. The 'incentives' of the relevant individuals within the Company, were according to Professor Yilmaz, relevant and something he should consider and comment on.

443. There is some force in the Company's point here, and in the Court's view he sometimes could be fairly said to be straying beyond his legitimate brief as an expert on those issues.

444. The Court has not been assisted by his views on some of those matters, having found the facts from other sources, but it does not make an adverse finding against Professor Yilmaz's independence as a result. Rather the Court takes the view that his straying into those areas was because he could get 'carried away' with his genuinely held theories of what was going on in the business at the relevant times.

445. The Court does not accept the Company's criticism of him as an unsatisfactory expert witness who was 'under prepared' for the role or who did not fully appreciate his duties.

446. Neither does it accept that he was prone to deflection and obfuscation, or that he refused to engage succinctly with the questions put to him.

447. The Court does not accept the Company's allegation that he was focused on assisting his clients and did not give the Court clear and objective evidence.

448. The Company argued that he was not focused sufficiently on the Management Meeting, perhaps because of his ill health and acknowledged 'over commitment' to work at relevant times in the lead up to the trial.

449. As to this he acknowledged:

> "A. *I actually did not get to process those IR responses right away. As you may know, I was actually unfortunately not well, and I was stuck in another deal litigation. So I was actually not even put – focusing on Sina at that point.*
>
> *Q. I wasn't aware of the precise timings. But, nonetheless, you didn't raise the question of those comparables at the management meeting, did you?*
>
> *A. I was working on another case at that point. I wasn't focusing on Sina at that point".*[120]

450. The Company fairly says the fact that Professor Yilmaz was focused on another matter at the time of the Management Meeting is not a valid excuse for having failed to engage appropriately with this aspect of the pre-trial process.

451. The Company argues that it is notable that Professor Yilmaz did not take the opportunity to ask questions of the Company's management at the Management Meeting (some of whom were directly involved in the preparation of the Privatisation Projections, for example).

452. Had he done so the Company says it would have had a chance to explain the workings around the Privatisation Projections and could have responded to Professor Yilmaz's criticisms during the Management Meeting itself.

453. Having reviewed the transcript, the Court agrees that it seems that he did not take full advantage of the opportunity to ask questions at the Management Meeting, although it notes that although Ms Dongling Wang attended, Ms Ma did not.

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[120] {Day15/62:6} - {Day15/62:15}

454. Having reviewed the relevant background, the law, and the evidence, the Court sets out its findings on the key issues.

Decision

Merger price

455. Mr Jaishankar says certain elements of the deal process limited the degree to which the merger price could be relied upon and a 10% weighting should be applied to the overall conclusion.

456. Professor Yilmaz, because of his view of the alleged flaws in the Special Committee process gives it no weight at all.

457. The Court prefers Professor Yilmaz's conclusion and gives it no weight. The Court's conclusion is that it would be unreliable to apply it to a fair value determination because there was no mechanism for price discovery.

Independence, objectivity and expertise of Special Committee

458. The Court has no reason to doubt the expertise, objectivity and independence of the Special Committee. It accepts that the two members who gave evidence were aware of their duties to the Company and the unaffiliated shareholders.

459. The Court finds, having heard their evidence and had it tested, that they were not compromised by their long tenures on the Board and their relationship with Mr Chao. Nor were they compromised by the terms on which shares in Sina were purchased by Mr Chao or the alleged commercial ties between Sina and Song Yi Zhang's business (Mandra Capital) and Yichen Zhang's (CITIC Capital).

460. They kept themselves at a distance from Mr Chao and did not communicate with him about the merger proposal before he sent it to the Company,[121] or generally throughout the merger process, save that Mr Chao says he spoke to Song Yi Zhang a couple of times with regard to

[121] {Day4/161:6} - {Day4/161:17} and {Day4/162:13} - {Day4/162:16}

the negotiation of the merger price and in responding to certain questions as CEO of the Company.[122]

461. They were independently advised throughout by Gibson Dunn and Morgan Stanley Asia. The Special Committee also obtained a fairness opinion from Morgan Stanley Asia, which had reviewed the commercial terms in detail and advised that the Merger was fair from a financial perspective.

462. The Court accepts the evidence of Song Yi Zhang and Yichen Zhang that the Special Committee concluded that the merger price represented a fair price for the Company's shares at the time.

463. There is no reason to doubt that that this was their genuinely held view.

Motivation of Special Committee

464. The Court does not accept, having heard and assessed the evidence of Song Yi Zhang and Yichen Zhang, that because the Special Committee had long standing professional or private loyalty to Mr Chao at the time of the transaction, that it would not be likely to go against Mr Chao's wishes. That does not accord with the Court's estimation of their seniority and professionalism.

465. However, it is clear from their evidence that having granted him voting control of Sina in 2017 and acknowledging his importance to the Weibo business, which had created a lot of value for shareholders, they wanted to incentivise and keep him.[123]

466. Whilst the Court rejects the case that they were not independent and objective and suborned the interests of the unaffiliated shareholders to those of Mr Chao, it accepts the Dissenters' case that the Special Committee was unable to put in place a process that was effective in producing price discovery.

[122] See §42 of Mr Chao's Witness Statement
[123] See Mr Zhang's evidence {Day3/131:7} - {Day3/134:4}

Alternative transactions

467. The upshot of an examination of the evidence is that there was no 'go shop', no pursuit of alternative transactions, or pre market checks, and no third parties submitting an offer, despite knowledge of the New Wave offer being in the market for a number of months.

468. As to alternative transactions such as a reverse merger or an in-specie dividend distribution of Sina's holdings in Weibo to Sina shareholders, the Court accepts the Company's evidence that they may well have been unworkable, not least from a regulatory and PRC Government supervisory standpoint. The Court finds that they were looked at by the Special Committee with Gibson Dunn and Morgan Stanley Asia but not pursued.

469. Song Yi Zhang and Yichen Zhang, were cross-examined in relation to these potential alternative transactions and their evidence was consistently to the effect that they were unworkable in Sina's operational reality.

470. They also confirmed the futility in their view of carrying out detailed pre-market checks or a "go shop" process.

471. Yichen Zhang said:

> *"Q: Was the alternative transaction not feasible because Charles would not have agreed to allow that to go forward?*
>
> *A: Any alternative transaction that we discussed would have involved a change of control. Now, a change of a control of a major media asset in China, we know the government will not approve it. And I can lay the context because I have -- in the history of the company, during the -- nearly 20 years I have been on the board, I have appeared together with management in front of the regulators total three times. And these are confidential meetings. I cannot tell you the exact content that was discussed. But every time it concerned about control. ... -- for example, right before the 2017 --*
>
> *Q. Focus Media?*
>
> *A. -- proxy, because it was so public.*

Q. Yes.

A. So we were coordinating as well. Now, Charles gets called in to the regulators fairly regularly. You know, and I get involved because, as a board member and a strategic committee member, and also I'm a trusted person from the eyes of the regulators, because I – you know, I serve on the government advisory council, and I'm the only one from the investment industry, and I have served since 2008. And in some ways, you know, I'm in quarterly meetings with all the economic ministers to advise the [country] on economic policies. So I don't think you're going to find anybody outside of government who is more qualified to opine on these type of issues. And I'm telling you, on the back of the mind of every CEO in the internet sector in China, everything they do, you know, first, we all know, you know, there's high degree of censorship. The reason the US internet companies like Yahoo, Google, that went into China but decided to pull out, is because they could not follow these Chinese laws. And a lot of these laws were not necessarily -- if you look at the regulations, they may be vague. But they give you constant guidance. Okay? So in no uncertain terms that you could actually put this up for sale to sell control, especially in the process if you risk inviting a foreign investor in. Because as soon as you do a go-shop, you open up the process. Now, how can you say I'm doing go-shop just for Chinese players, not for foreign?"[122]

...

"..-go-shop ... it's a non-starter .. with the regulators... you are inviting suspicion from the government, and they will become pissed off that you make them look bad and now that there are foreign investors coming in, but they had to block it."[123]

472. The Court accepts this evidence.

The only show in town

473. Despite the view that it was a 'non-starter' the Special Committee did consider, with Gibson Dunn, conducting a "go-shop" process in respect of the merger transaction, but they knew from the Merger offer letter that Mr Chao had no interest in selling his stake, so it was not going to be practical given the 61.1% voting power that the Buyer group had.

474. To all intents and purposes whilst they may have been 'open to offers', the reality was that no such offer would have been actionable.

475. The Court concludes on the evidence that the PRC Government's tight control on companies such as Sina and Weibo (the PRC Government held a "Golden Share" in the onshore VIE entity of Weibo and an effective veto in relation to any transaction that had implications for Weibo) prevented a realistic market check or 'go-shop' process. Any change of control in either Sina or Weibo would likely be blocked by the PRC government. The reality was that there was no other purchaser of Sina or Weibo except for Mr Chao.

476. As Song Yi Zhang said:

> *"Q. And so at that stage this is something that the Special Committee was considering, is that right, or was prepared to consider, having got the advice from Gibson Dunn and Morgan Stanley?*
>
> *A. Pre-signing –*
>
> *Q. Pre-signing –*
>
> *A. -- market check and go-shop?*
>
> *Q. -- market check and go-shop?*
>
> *A. Yes, although we knew at that time that the offer from Mr Chao states that he has no interest in selling his stake. So we knew that this was not something that is going to be really practical. But yes, we were open to any proposal to carry that out if it is actionable.*
>
> *Q. Well, did you –*
>
> *A. We certainly had no objection to it, but like we knew from the time of receiving the offer that any such market check or like go-shop would need the cooperation of -- or*

support of Mr Chao, and he had already stated in his offer letter that he was not interested in selling his stake."[124]

477. 'No objection' is not the same as actively pursuing potential bidders. The absence of these mechanisms, even though they may not have been of any practical utility, means that the Merger Price should not be relied upon to assess fair value for the Dissenters' shares. The proposition that the Merger Price can be relied on to assess fair value was simply not tested.

478. Although the Special Committee may have been open to considering other bids, there were no realistic alternatives to Mr Chao's offer which were either forthcoming or likely to be viable in all the circumstances.

479. Yichen Zhang gave evidence that the most likely alternative buyer was Alibaba, but it had already indicated that it had no interest in entering any sort of deal (having been approached directly by Yichen Zhang) and in any event, as it transpired, would have been prevented from being party to any form of acquisition by the PRC Government, which had directed that Alibaba divest itself of its media assets.[125]

480. Song Yi Zhang referred to a termination fee that would also be payable to Mr Chao:

"JUSTICE PARKER: If there had been a bid that came in that wouldn't have had an obvious issue with the regulatory authorities in the PRC, how would that have progressed? Say it was not a bid that was massively higher than the buyer group number, but was, say, materially higher, what would the Special Committee have done?

A. ***If there's an offer that had come in like as how we had put it in the merger agreement, that constitutes a superior offer, of course we would look at it, and we would negotiate with Charles Chao to see if we could increase the price. He probably couldn't because he already indicated to us that he – that was his best offer - he was constrained by his financing. So if there's a competing offer that was a superior offer, that we believe are actionable, we would have recommended that to the shareholders****.*

[124] {Day3/97:25} - {Day3/98:19}
[125] {Day4/61:2} - {Day4/61:14}

JUSTICE PARKER: By actionable, do you mean realistically achievable.

A. ***That's right, like if they had come with regulatory blessing, then I think that we would be obliged to present that to the shareholders, and terminate the agreement with Mr Chao and pay him the $25 million termination fee.***

JUSTICE PARKER: Yes, because there was that fee.

A. A. That's right'
(emphasis added) [126]

481. Mr Chao reiterated in his evidence that he was the only one who would be allowed to 'do the transaction' due to the regulatory issues relating to any change of control at the Sina or Weibo level.[127] He made it clear in his evidence, as he did at the time he made the offer through New Wave, that he did not intend to sell his stake to any third party.

482. The Court finds this would inevitably have had the effect of deterring any potential interested third party which was considering make a competing offer.

483. Mr Chao repeated the fact that there could be no alternatives to the Merger because he was the only one who could take the Company private.

484. Against this most unpromising backdrop, he maintained if there was a superior offer that was deliverable (for example, because it had funding and had Government backing) this would have to be considered by the Special Committee and by Morgan Stanley Asia (in the context of their fairness opinion) and by Mr Chao himself having regard to his duties to the Company:

"A. It was never my intention to compete with anybody, because there could never be a competitor in a bid like this. That was my intention, is take the company private. If -- if the Special Committee and Morgan Stanley did their -- well and supported fair value pay, or they don't agree with my -- they can deny it. But it's not my intention it was -- I don't think they have flexibility, I mean, to seek another transaction. I do -- I can tell you what transaction is possible. If there is a superior transaction offer, which

[126] {Day3/129:7} - {Day3/134:5}
[127] {Day4/166:3} - {Day4/168:16}

is blessed by the government, and with the -- you know, credible source of, you know, support from the government and funding, there is no reason – the Special Committee needs to consider this. It's their responsibility. And Morgan Stanley has to consider that in their fairness opinion, and I have to consider that as a director of the company independent of my own offer."[128]

485. The Court finds that this was a most unlikely scenario in all the circumstances.

486. The Court does not accept that it was realistic to suppose that the Special Committee, even if they had concluded that there was a superior proposal, would have being likely to change the recommendation in support for the merger and /or terminate the merger agreement and cause the Company to enter into a new agreement.

487. Mr Chao, who controlled the vote, had made his intentions perfectly clear.

488. The lack of 'flexibility' which was left to the Special Committee meant that there was no real 'price discovery". The Special Committee well understood the regulatory hurdles that existed and the PRC Government's and the PRC regulators' attitude to any change in ownership of Sina and Weibo.[129]

489. Therefore whilst it is the case that a Special Committee was formed with three independent directors each with relevant experience ,with the power and authority to act in the best interests of the Company and the unaffiliated shareholders, the Court finds that the constraints they were under and the stated intention of the majority shareholder, meant that the process was not able to be, and was not, a robust sales process.

490. There was no effective challenge or alternative to Mr Chao's bid.

MOTM

491. The Special Committee gave up the MOTM provision which required the majority approval of the outstanding unaffiliated shareholders (not just those present and voting).[130]

[128] {Day4/177:5} - {Day4/177:18} and {Day4/183:6} - {Day4/183:23}
[129] {Day3/103:15} - {Day3/103:19}
[130] See Gibson Dunn comments on draft Merger Agreement sent to New Wave on behalf of the Special Committee 30 August 2020

492. This was given up for a 5.6% increase in the offer price. The MOTM provision if implemented could have prevented the transaction from being voted through.

493. Professor Yilmaz describes it as a significant flaw in the process. The Court agrees that this may fairly be said to be a relatively small price to pay to avoid such a circumstance.

494. In his evidence Mr Chao said that this was not a '*normal transaction*':

> *"Q. Well, let me explain what I mean by that. A majority of the minority condition can protect minority shareholders because in a privatisation position it submits the controlling buyer's offer effectively to a market check?*
> *A. That's right. That's in a normal privatisation case. As I said, it's not a normal one, that's first. Secondly, it was never required by the law. So what are you getting to? I understand that. I have been in many, many deals in my life. I understand there is a certain step you have to take in privatisation and whatever. It's not a normal privatisation. It was intended to be the majority shareholder take over the company in the first place.*
>
> *Q. Well –*
>
> *A. So why should I agree to that if that was the intention in the first place?*
>
> *Q. Well, I suggest –*
>
> *A. And the final vote says (inaudible) was on majority and for the shareholders overwhelmingly vote for it yet. And there could be no complaint from other shareholders. I mean, so what are you getting to? I mean –*
>
> *Q. What I'm getting at is this –*
>
> *A. You just educate me what is the normal process should be, and I did not follow the normal process. And I told you, and I told you the -- I told the Court entirely that was not normal transaction." ……..*[131]

[131] {Day5/81:12-82;13}

495. The Court found it necessary to enquire further:

> *"JUSTICE PARKER: Did you understand by −− and I understand your evidence is: I didn't have to agree to this by law.*
>
> *A. Sure.*
>
> *JUSTICE PARKER: Did you understand that the reason it was asked for was that shareholders could block the merger if they thought the price was too low?*
>
> *A. I understand fully, yes. And that was also the responsibility of Morgan Stanley and the Special Committee raised that. I fully understand that.*
>
> *JUSTICE PARKER: So it was a reasonably big point.*
>
> *A. It was. That's why I give the concession of price. I think there is a trade-off here.*
>
> *JUSTICE PARKER: Yes.*
>
> *A. I mean, I fully understand all these points, yes."*[132]

496. The Company's attorneys had advised Bonnie Zhang that whilst an MOTM clause might be helpful for the Sina board to defend against future lawsuits from public shareholders, it would reduce deal certainty on the transaction and that most of the recent 'going private' mergers did not have that closing condition.

497. The Court agrees with Professor Yilmaz and finds that this was another flaw in the process.

Foregone conclusion

498. Once Mr Chao had made it clear that he did not intend to sell his stake in the Company to any third party it was in the Court's view effectively 'game over" for all practical purposes.

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[132] {Day5/86:2} - {Day5/86:15}

499. The Company argued that the Merger was not a foregone conclusion and that the Special Committee had the benefit of a "fiduciary out' provision.

500. Having heard the evidence, the Court prefers the Dissenters' case, as supported by the opinion of Professor Yilmaz, that Mr Chao's indication in the offer letter that he was not interested in selling his stake in Sina was in practice determinative of the process.

501. This is also supported by contemporaneous evidence.

502. On 20 August 2020 Morgan Stanley wrote to Bonnie Zhang on behalf of the Special Committee specifically in relation to New Wave's "*feedback on possible transaction alternatives. As discussed, we would appreciate the Buyer's consideration of these alternatives"* and whether they would be supportive of them.

503. The alternatives identified were:

> *"a potential transaction involving a sale of Weibo's controlling stake held by SINA to a third party at an acceptable valuation? This could include, for example, a potential sale to Alibaba, or if it does not exercise its right of first offer, to a third party who may be acceptable to the relevant regulators*".
>
> *"a distribution in specie of all or substantially all of the Weibo shares held by SINA to SINA's shareholders in connection with (or as an alternative to) the potential going private transaction? We noticed that certain distributions of Weibo shares held by SINA to SINA's shareholders were carried out in 2016 and 2017".*[133]

504. Bonnie Zhang, having obtained Mr Chao's instructions, sent New Wave's response:

> "*Thank you for your inquiries. We appreciate your thoughts but New Wave as the controlling shareholders of Sina considers Weibo as a vital piece of assets in Sina's integrated business operations and has no intention to acquire Sina without Weibo or break Sina into pieces*." [134]

505. When this was put to Mr Chao he confirmed:

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[133] {Day4/175:19} - {Day4/176:8}
[134] {Day4/178:16-21}

"*That was a true statement. That was exactly the right reply she should have given Morgan Stanley"*[135]

506. That in the Court's view makes the position quite clear.

507. The so-called 'fiduciary out' provision did not make up for the fact that there was no robust market check with outreach to all logical buyers. The Court finds that the prospects of any unsolicited bid were effectively stifled by Mr Chao's stated intention to veto any alternative transaction.

508. The Court also agrees with the Dissenters' case that a fair reading of the 'no shop' and 'fiduciary out' provisions in the Merger Agreement together resulted in the Special Committee only being permitted to even speak to a third party (who made or was likely to make an unsolicited alternative offer) if it determined that it would amount to a 'superior proposal'.

509. The assessment of whether or not the superior proposal was more favourable to the Company and its shareholders than the merger depended on whether it was reasonably capable of being completed i.e., realistically achievable on its own terms.

510. That could never be the case because Mr Chao made it clear he would not sell his shares, albeit he might have had to advance a further offer of his own.

Mr Chao's conduct

511. The Court does not find that Mr Chao exercised his voting powers for an improper purpose when approving the merger. Mr Chao gave credible evidence that he believed that without some major restructuring and new direction, the downward trend in Sina's share price and Sina's business prospects would have continued. A privatisation would allow for a new direction and decisions with higher risk attached could be acted on quickly, which would have been difficult had Sina remained as a public company. He was prepared to take on those risks.

512. It was suggested to Mr Chao that he had launched his offer at a 5 year-low, the implication being that the price paid was at an undervalue, which he strongly denied.

[135] {Day4/178:24} – {Day4/178:25}

513. The Company says Sina's share price was not at a 5-year low, as in fact Sina's shares had traded lower than the UMTP in 2019 as stated by Mr Chao,[136] and Sina's share price was in decline from a high in March 2018, so waiting for a future time may not have meant that Sina's share price would improve.

514. Mr Chao maintained he was in fact paying a significant premium by the Merger Price.

515. The Court rejects the Dissenters' case that Mr Chao made his offer at a time which he knew was a low point in Sina's share price.

516. The Court finds that Mr Chao's primary purpose in the process was to sanction an acquisition of the Company by him alone. As he said in evidence:

> *"It's not a normal privatisation. It was intended to be the majority shareholder take over the company in the first place"*[137]

517. He was clear that he was signalling to the market that a sale to New Wave was the only possible transaction form the outset.

> *"Q. And looking back to the offer letter -- proposal, back on, the paragraph we were looking at item 6, the last sentence that I read to you, in that sentence you, as New Wave, are effectively signalling here your intention to control the process such that it's a binary process. Either there's a sale to New Wave or there's no transaction?*
>
> *A.That's correct."*[138]

518. As he also candidly testified:

> *"Q. Do you accept that in general in a privatisation transaction, where the buyer controls the board and voting power of the shareholders, there is a risk that the buyer will use that control to push its transaction through at a price that's unfair to minority shareholders?*

[136] The UMTP was at US$36.67 on 2 July 2020 and the shares had traded at US$31.90 on 20 November 2019, {Day5/89:1} - {Day5/90:25}
[137] {Day5/81:23-25}
[138] {Day4/166:3-10}.

A. So this is 'another' [possibly 'not a'] general normal privatisation process. It was never meant to be.

Q. Do you –

A. You have to understand the pre-condition of this deal. When proposed this deal, it was never meant to be comparison to other alternatives for the companies. It's not a deal for creating -- like we are soliciting deals to, let's say -- let's sell in the best price for the company and let's, you know, get the best price for all the shareholders. I intended, as I said in my offer, and I also explain in my statement, it was very clear that it was only intended I want to buy this company. And I explained in my statement why I was the only one who could do that. And if the price is not supported and independent committee didn't like what I offer, they can reject it."[139]

519. As a consequence, he said, it "*really doesn't matter"* whether there was a market check, or other processes to facilitate price discovery:

"Q. Would you agree this. Would you agree that it's critical that in the process that surrounds a privatisation transaction like this, where the buyer, yourself, has a large degree of control over the target company, that the process around that is robust and eliminates conflicts of interest and facilitates a proper price discovery for the shares?

A. It really doesn't matter if my offer is the only choice for the company for privatisation.

Q. So that doesn't matter, right?

A. It really doesn't matter. What you said –

Q. I'm going to write down that doesn't matter.

A. I said in the context, it really doesn't matter. You never get into that kind of situation.

[139] {Day5/31:8} – {Day5/32:5}

Q. No –

A. When I said I'm the only who could do it, there are two aspects of what I meant. One is there could be no alternative transactions.

Q. I think –

A. Secondly, because I control the vote, I have majority of the vote, that's why I had ability to realise this deal.

Q. Well –
A. And who would launch a deal that would have a lot of uncertainty that could be a lot of uncertainty for the company and disturbance to the operation and the businesses, and cause a lot of tension in the press and the government?"[140]
……..

520. The Court then had the following exchange with Mr Chao, he having candidly exposed the issue:

"JUSTICE PARKER: Can I just summarise my understanding of your evidence.

A. Sure.

JUSTICE PARKER: I think you're not accepting the conflicts point that is being made.

A. Yes.

JUSTICE PARKER: The reality of this deal, as was made clear by your indicative offer, was that you didn't intend to sell to anyone else.

A. Yes.

[140] {Day5/32:12} – {Day5/33:13}

JUSTICE PARKER: You wanted to buy the rest of the shares in the company.

A. Yes.

JUSTICE PARKER: The Special Committee was set up as an independent process.

A. Right.

JUSTICE PARKER: To provide the check which is set out in the rules of the document.

A. Exactly.

JUSTICE PARKER: In fact, this is the important point that I need to just make sure is what you're saying, in practice, there was no other show in town. It was only you.

A. Yes.

JUSTICE PARKER: And that accorded with your intention.

A. Yes.

JUSTICE PARKER: So there was no point in soliciting other bids or other buyers –

A. Exactly, exactly.

JUSTICE PARKER: -- for the reasons you have given and which are in your statement.

JUSTICE PARKER: That's broadly what you're saying.

A. Yes. But having that does not mean that Special Committee does not have the responsibility to entertain other deals.

> *JUSTICE PARKER: I understand that. And my job is, in due course, going to be to have to assess how they carried out that job…*[141]

Critical flaw

521. The critical flaw in the process is that the Court has not been persuaded that there was a sufficiently robust sales mechanism[142] upon which any weight can be placed. There was no realistic and fair opportunity for alternative bidders to pursue a potential deal. There was no market check or outreach to other buyers.

522. Mr Chao knew that was the case.

523. The Company was taken private by Mr Chao in circumstances where he had a clear majority stake and evident self-interest in the outcome and the price arrived at.

524. In the Court's view the absence of a market check leads to the inevitable conclusion that the process was not effective for price discovery and the merger price is not a reliable indicator of fair value as a result.

525. The arguments put forward by the Company relating to the Morgan Stanley Asia fairness opinion, the EGM vote results and the argument that the merger price was at a premium to the adjusted market trading price, do not in the Court's view mitigate this critical flaw.

526. Neither does the fact that the Court has found that the Special Committee did the best job they could in all the circumstances. The Company did not perform a pre-market check. The Special Committee did not pursue a 'go shop' or alternative transactions or successfully negotiate for the provision of an MOTM.

527. The Courts, see Birt JA in *Trina*, and academic commentators, have warned that where a controlling shareholder effects a merger and relies on the merger price to indicate fair value to minority shareholders, this requires particularly close scrutiny.[143] Having applied that to this case there is only one conclusion that results.

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[141] {Day5/33:21} – {Day5/35:9}
[142] *Trina (CICA)* at §139
[143] See e.g., discussion in Subramanian, Guna 2005 Fixing Freezeouts Yale Law Journal 115 2-70 at fn 49;and Harford, Jarrad, Jared Stanfield and Feng Zhang 2019 'Do insiders time management buyouts and freezeouts to buy undervalued targets' Journal of Financial Economics 131 p230.

Morgan Stanley

528. The Dissenters also argued that Morgan Stanley relied heavily on New Wave's own assessments and failed to properly interrogate the data presented to it because it had its sights on future business from Sina.

529. Having found that the case for reliance on the merger price as a basis for assessing fair value was irredeemably flawed, it is not necessary for the Court to reach any concluded view on whether Morgan Stanley's objectivity was compromised.

530. It would in any event be difficult to reach any view on Morgan Stanley's conduct because there was insufficient evidence with which to fairly do so at trial. The Court draws no adverse inferences against the Company for not having tendered a witness from Morgan Stanley.

531. In addition, as no one from Morgan Stanley gave evidence it has not been possible to properly test their conclusions as to the merger price from the Fairness Opinion. The Court affords the Fairness Opinion no weight for all the reasons advanced by the Dissenters.

Conclusion

532. The Court therefore finds that even the modest weighting of 10% for the merger price applied by Mr Jaishankar is not appropriate in this case and prefers to give the merger price no weight in accordance with Professor Yilmaz's view.

533. The merger transaction was effectively a foregone conclusion and was not the product of a robust arm's length process. No third-party offers were obtained and the Special Committee undertook neither pre-market nor post-market checks. A protective MOTM condition was also given up for a relatively marginal increase in the offer price.

534. In all the circumstances there was never any realistic prospect that any other bidder would choose to compete with the Buyer Group. The Special Committee's efforts were to no avail given the circumstances and it therefore was unable to provide any meaningful protection for unaffiliated minority shareholders who were at risk of, and effectively were, bought out at the price the Buyer Group alighted upon.

Sina Market trading price

535. Whilst the experts agree that the market for Weibo's shares at the relevant time was semi strong form efficient, they disagree with regard to the market for Sina's shares.

536. Mr Jaishankar having considered general overarching factors, liquidity factors, *Cammer* factors, and market efficiency by way of an event study, concludes that the market trading price for the Company's shares was efficient prior to the Announcement Date. Mr Jaishankar gives this a 40-50% weighting to his valuation analysis.

537. Professor Yilmaz conducted a test of market efficiency and the Company's stock price reaction to past announcements of the Company's financial results (by way of an event study) and concluded that it was not trading in an efficient market. Professor Yilmaz accords Sina's market trading price no weight.

538. The Court addresses below the following issues which arise for decision:

i) whether the Company has shown that the market for shares in Sina was semi strong form efficient on the basis that the stock price fully incorporated all publicly available information ,and if so what weighting to accord to it.

ii) whether the Company has shown that there was no material non-public information (MNPI) relating to Sina's shares as at the Announcement Date.

iii) whether the effect on the market caused by the COVID pandemic in 2020 continued to impact Sina's share price as at the Announcement Date; and

iv) whether Mr Jaishankar's walk forward calculation is reliable given the market conditions in July to December 2020.

Was the market in Sina shares semi strong form efficient as at the Announcement Date?

539. Whilst there is no presumption in favour of markets being efficient, the Court is entitled to start from the proposition that stock traded on a major US stock exchange like the NASDAQ is likely to be traded in a market which is semi strong form efficient, unless there is good empirical

evidence to displace that starting proposition.[144] The Court also needs to be satisfied that the specific market for Sina's shares was efficient. The burden is on the Company to prove this.

540. Professor Yilmaz rightly recognised the importance of a contemporaneous evaluation of the market price as a starting point:

> *"Q. Just picking up on his Lordship's questions, you would in principle start to see whether or not the market objective contemporaneous basis of evaluation was available and then work along. I accept what you say that experience might −− even before that process, you might suspect that you're not going to end up there. But that's your first port of call?*
>
> *A. If you're talking about a publicly traded company in a well-functioning*
>
> *Q. Could you say that --*
>
> *A. Publicly traded company in a well-functioning market, I would definitely look at the market price and study that very carefully before I do anything else."*[145]

Event studies

541. Event studies produce useful evidence on how a stock's price responds to new information. They are designed to examine market reactions around specific information events. The utility of such studies arises from the fact that, given the assumed rationality of the market, the effects of an event will be reflected almost immediately in the price of the relevant stock.

Professor Yilmaz

542. Professor Yilmaz performed a two-step test of market efficiency and found that the market for Sina's stock did not always move in the direction (positive or negative) which he expected, based on comparing its actual revenue and earnings per share (EPS) against consensus estimates for its revenue and EPS (referred to as an earnings surprise).

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[144] *In the Matter of FGL Holdings* (Unreported, Grand Court, 1 September 2022), at§287
[145] {Day14/50:18} - {Day14/51:5}

543. He also found that the price did not always move to a statistically significant extent on the days when revenue and earnings were announced, and in his view both the direction of the expected price change and the extent of the change needed to be present to show that any given stock return in relation to an individual event was indicative of the market being semi strong form efficient.

544. To further refine his test he examined only the days where the revenue or earnings surprise was statistically significant i.e., where the standardised unexpected earnings score was greater than 1.96, and where the revenue and earnings surprise was statistically significant.[146]

545. His conclusion was that Sina's stock price reactions did not provide sufficient evidence for the existence of semi strong form market efficiency for its shares.

Mr Jaishankar

546. Mr Jaishankar relied on the metrics relating to the liquidity of the shares and *Cammer*[147] factors to conclude that the market was likely to be semi strong form efficient. [148] He accepted that, of the *Cammer* factors, the primary tool for determining market efficiency was a cause and effect relationship between unexpected news and an immediate response in the stock price.[149]

547. The Court accepts Professor Yilmaz's view that assessing liquidity alone can only take you so far and you would still need do an event study. A share which is liquid and freely traded can be regarded as a necessary condition for the market in the share to be efficient, but liquidity by itself does not provide a reliable basis for establishing efficiency.[150]

548. The Court also finds that, as submitted by the Dissenters, Mr Jaishankar is a relative novice in preparing and using event studies, whereas Professor Yilmaz is an expert in the field.

549. Professor Yilmaz demonstrated that he was fully conversant with the development, academic underpinning, and practical application of the methodology, which he also teaches.

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[146] §§ 213 and 214 of Professor Yilmaz's First Report
[147] (i) the average weekly trading volume of the stock; (ii) the number of securities analysts following and reporting on the stock; (iii) the extent to which market makers traded in the stock; (iv) the issuer's ability to file an SEC registration form S-3; and (v) the demonstration of a cause and effect relationship, over time, between unexpected corporate events or financial releases and an immediate response in the stock price.
[148] §§13.20-13.65 of Mr Jaishankar's First Report and §§9.15-9.88 of his Supplemental Report
[149] {Day7/146:19} – {Day7/147:9}.
[150] {Day18/38:23} – {Day18/39:10}; {Day18/245:5} – {Day18/247:2}.
251121 In the matter of Sina Corporation – FSD 128 of 2021 (RPJ) Judgment

550. The difference in depth of knowledge and experience was apparent from the evidence each gave:

> *"Q. How many event studies have you personally designed, Mr Jaishankar?*
>
> *A. Two.*
>
> *Q. Two event studies? Two?*
>
> *A. Correct.*
>
> *Q. Is one of them the event study in this case?*
>
> *A. It is.*
>
> *Q. So when you came to the event study in this case, it's only the second time you had designed an event study?*
>
> *A. That is correct.*
>
> *Q. Can I infer from that, with no disrespect, that you're not an expert in event studies?*
>
> *A. I will happily agree that I don't prepare event studies as a normal course of my practice. This is an idiosyncrasy, if you will, of 238s where event studies have been done. I have seen other 238s where, you know, event studies have been done on an informal basis. But I have done my best to create an event study that I thought was sensible, based on my understanding of what the Court has accepted in the past.*
>
> *Q. Event studies are common in appraisal proceedings in other circumstances, not just 238 proceedings?*
>
> *A. In dissent appraisal cases, yes.*
>
> *Q. Yes.*

A. Or if you're looking at, for example, damages cases, where you're trying to figure out what are the damages to a plaintiff as a result of an alleged wrongdoing of the defendant. So in class action securities you do see event studies.

Q. Right. Well, the point is, Mr Jaishankar to conduct a systematic study which tests each selected event to determine what it reveals about market efficiency. You would agree with that at least?

...

Q. You can't −− obviously you can't pick and choose between your event dates; correct? You need to study them all in a consistent manner without any predisposition as to the results?

A. Correct. You don't go into it with a bias or a predisposition."[151]

551. Mr Jaishankar explained his previous involvements in assessing event studies as follows:

"A. I wouldn't characterise it that way, Mr McQuater. And I would also say I had sightlines −− I had consideration of the jurisprudence that I had sightlines on vis−a−vis the Trina matter, where the company's expert did a nonstatistical informal event study that was accepted by Justice Segal. And I also had regard to the company expert's event study in FGL, which was accepted by his Lordship.

Q. So your other experience is from reading two Cayman cases; is that right? About event studies?

A. Those are the sightlines I had in respect of what has been accepted by the Court.

Q. I see.

A. And I had regard for that. And in my view, what I have prepared here is more robust than both of them, and I thought I was on firm ground."[152]

552. He defended his methodology on the event study he conducted against further sustained attacks:

[151] {Day17/158:18} - {Day17/160:15}
[152] {Day8/4:19}

"A. We identified company−specific news with respect to that share repurchase, and we looked at what happened in terms of the stock price on that date, which was a little bit different than the other earnings releases.

Q. So you found some company−specific news, you looked at what happened in terms of the stock price, thought it might be helpful for your event study, so you included it; is that right?

A. Well, I wouldn't say I thought it might be helpful. I identified that news day, looked at it, and included it.

Q. It's the ultimate cherry−picking. You found a date here there was some company−specific news, looked at what happened in the stock price, and decided to put – to stick that one into your event study. Where is the rigour of analysis in that? I'm not understanding. If you have company−specific news, you look at that day and you include it."[153]

553. The Court has made due allowance for the relative inexperience of Mr Jaishankar in approaching his task, by closely analysing his evidence to the Court, and what weight to give it.

554. He was quick to accept that he did not prepare event studies as a normal course of his practice but nevertheless defended his methodology. The Court agrees with the Dissenters that his event study did not have sufficient rigour of analysis.

555. Professor Yilmaz by contrast used his experience and expertise in this area to devise a far more rigorous event study.

556. Both experts concentrated particularly on the demonstration of a cause and effect relationship, over time, between unexpected corporate events or financial releases and an immediate response in the stock price.

[153] {Day8/37:15} - {Day8/39:9}

Mr Jaishankar's direct tests

557. Mr Jaishankar relied on direct tests for efficiency based upon how the market for Sina's shares reacted to the news of the merger offer on the Announcement Date (6 July 2020) and when the agreement was signed on 28 September 2020. In his view the market was digesting information creating a cause and effect relationship.[154]

558. Professor Yilmaz was critical of Mr Jaishankar's 'direct' test if its purpose was to test for efficiency as at 2 July 2020 (that being the last day of trading prior to the Announcement Date on 6 July 2020) because the two dates chosen by Mr Jaishankar for his 'direct' test were both after 2 July 2020 and therefore inappropriate for that purpose.

559. Mr Jaishankar accepted this to some extent:

> *"I'm not trying to connect the dots in some manner to say: and therefore it's efficient pre-announcement".*[155]

560. He confirmed that in his view the stock price increased in a statistically significant manner after the two events and said:

> *"... I'm just demonstrating a cause and effect between announcement of the initial offer and SINA's share price on the first date, and then the announcement of the definitive agreement at a higher price, and increment in SINA's share price on the second date".*[156]

561. He maintained in his evidence that the market continued to be efficient albeit affected by the announcement of the merger proposal:

> *"I'm simply observing that the market post Announcement Date was reacting to news in a way it was sensible -- that was sensible, showing a cause-and-effect relationship…I'm not drawing a line at the end of this and saying: and therefore SINA's shares are efficient as at July 6".*[157]

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[154] {Day7/149:24} – {Day7/156:8}
[155] {Day7/155:10-11}.
[156] {Day7/151:14-18}.
[157] {Day7/152:9-15}

562. Mr Jaishankar used his event study to take into account the effect of market and industry factors on stock returns by using a regression analysis to estimate the historical relationship between the Company's stock returns and the corresponding returns on a market index and an industry index. This he referred to as a two factor model.[158]

563. An important step in the process is hypothesis testing which determines whether there is a significant difference between the expected stock returns and the actual stock returns. That measures whether or not random chance might be responsible for an observed effect on a particular stock.

564. Mr Jaishankar conducted indirect tests of market efficiency pursuant to which he analysed the release of new information on five separate dates relating to quarterly earnings in 2019 and when the Company announced a share buyback programme.

565. According to Mr Jaishankar, Sina's stock price reacted in a statistically significant manner on each of those dates, which were chosen because they were proximate to the Valuation Date and the outbreak of the COVID pandemic.[159]

566. He then enlarged his event study to include four additional event days in relation to some 2018 quarterly earnings dates and the day the first quarter 2020 earnings were released. This gave a total of nine event dates which between July 2018 and July 2020 showed that the residual return was statistically significant on seven out of the nine days.

567. Mr Jaishankar's view was that when testing for informational efficiency, changes to the level of trading volumes on event days can show that market participants were paying attention and absorbing or aggregating information, even if the share price did not materially move as a result.

568. Mr Jaishankar's event study shows that the trading volume of Sina's shares during the first trading day impacted by the 20 identified events exceeds its average daily trading volume for the prior year each time, except for once on 3 March 2016.

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[158] A two factor model uses both a market index and an industry index as variables. An expected return on the event date is then calculated based on the parameters from the regression analysis and the performance of either or both the market index and an industry index on that date. The expected return is then subtracted from the actual return to estimate a residual return which is sometimes called an abnormal return or a market adjusted return.
[159] {Day7/164:3-19}; and {Day7/166:17} – {Day7/167:10}

569. Mr Jaishankar said:

> *"A…what I'm saying to you is,…I've looked at was the volumes prior to the event day. So when I looked at trading volumes going into the event day versus the event day, I saw orders of magnitude spikes in the trading volume.*
>
> *…*
>
> *I found that instructive.*
>
> *Given the orders of magnitude -- I don't think we should lose sight of that -- it wasn't a spike in volume of 5 or 10%, these were spikes in volume of three times or five times the previous day.*
>
> *…*
>
> *… I would say, if there's news to digest, then perhaps the market, having significant orders of magnitude, increase in daily trading volume is indicative of trying to impound that new information".*[160]

570. He observed that in relation to all but one of the 20 earnings announcements that Professor Yilmaz had analysed in his event study, there were significantly elevated levels of trading volume relative to the yearly average for Sina shares irrespective of any statistically significant change in the price.

571. In his view that demonstrated that the market was reacting to and incorporating new information into the stock price and trading on the basis of that information.[161]

The problems with this approach

572. Mr Jaishankar's approach to his event studies came in for several criticisms during his cross examination particularly when compared with conventional methodology.

573. Mr Jaishankar accepted that he did not follow Professor MacKinley's methodology of an event study to test efficiency[162] and said that in his view that was not the only way to go about testing for informational efficiency.

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[160] {Day8/37:15} - {Day8/39:9}
[161] §§9.31 and 9.32 of Mr Jaishankar's Supplemental Report
[162] {Day8/8:11-16}

574. As stated above, Mr Jaishankar tested for news events and reaction to those news events, observing if it was statistically significant or not. This included observing any changes in trading volumes for Sina's shares, regardless of whether there was any movement in Sina's trading price.[163]

575. However, Mr Jaishankar could point to no academic or practitioner source which supported his reliance on volume of trading on event days as a metric in testing the informational efficiency of a market in shares.

576. The Court is not satisfied that because the market responded to new information through the elevated trading volumes following earnings announcements and other press releases, this shows that the market was semi strong form efficient.

577. Rather than isolating and measuring the impact of individual pieces of information on Sina's stock price, which produces an empirical analysis of the cause and effect relationship between information surprises and price movement, Mr Jaishankar forms an impression based on his view of the result.

578. It does not establish a basis for what the expected reaction of the market to a piece of news would be, which the Court accepts should be an important component of the test.

579. As Professor Yilmaz said:

> *"Q. … But what I'm saying therefore, even leaving out those comments, the fact that the market fell is at least rational, given the mixed news that was received, and particularly the guidance given on the earnings call; correct?*
>
> *A. If you don't do analysis, anything is possible. I mean, if you're asking me that if there are mixed news, is it possible that market could go this way or that way, of course. But that's our job here. We need to evaluate those things in a systematic way. Otherwise, it's just going to look like this. Market went down. Could I find some news to justify it? Sure. Market went up. Can I look and find some information that justifies it? Good. That's not a test. Then* [the] *market will always be efficient with that approach, because you are just looking for something to justify it, without knowing the impact things -- of the things that you're trying to justify it with. Some of these things are already*

[163] {Day8/12:2} - {Day8/13:21}

incorporated in the earnings itself. Some of these things are not. And you have to systematically treat them for all of those days. So that's what I do. That's not what he does. He just talks about certain things to prove that: oh, there was some positive news, but there was also some negative news. Therefore, it can go up or down. Whatever it does, it must be correct. That approach is the wrong approach."[164]

580. The Court agrees with Professor Yilmaz's view. By not having first established how an efficient market could be expected to react to news left open whether or not it was informationally efficient.

581. Professor Yilmaz further said:

"Q. ... the aggregation of the information that he summarises provides an explanation, or a possible explanation, as to why the market moved in that way, because the market is not irrational, is it?

A. That's the test we are making here. Whether the market has the correct understanding of this company is the test we're running. I think that's the premise. You have to give a fair chance to go either way. So let me explain this. Let's read all of the things that he said he did. And then I would like to know, given this information, what does he expect. The market to go up or down? Can he conclude that?

Q. Well, his conclusion is that the market reaction was consistent with the type of information that was available?

A. No, he cannot conclude that. He -- if you read what he wrote, I would like to know what is his conclusion about what he expects the market to do. He doesn't know. He says: oh, because there are mixed news, it could have gone either way. It went one way, therefore it's okay. That's his conclusion.

Q. No, that really isn't fair. It's mixed news.

A. So?

[164] {Day18/65:7} – {Day18/66:8}. Professor Yilmaz's Supplemental Report §§57-59

Q. The market reacts to that mixed news. The market is following this. It's paying attention. It's aggregating the information. You would accept that; correct?

A. That's what we are testing." [165]

Professor Yilmaz's event study

582. Professor Yilmaz analysed the movements in Sina's stock price in response to surprises in Sina's revenue and earnings announcements over a five-year period between 6 July 2015 and 2 July 2020 (the surprises being unexpected revenue and earnings information in the announcements as compared with: (i) the market's consensus pre-announcement expectations; and (ii) Sina's own annual guidance for the relevant financial year).

583. Professor Yilmaz took the view that in an efficient market the stock price will react in a manner that is consistent with the surprise so that the movement correlates with the direction and magnitude of the surprise.

584. This, it seems to the Court, makes logical sense.

585. He also relied on what he described as the conventional views of Professor Damodaran:[166]

"When firms make earnings announcements, they convey information to financial markets about their current and future prospects. The magnitude of the information, and the size of the market reaction, should depend on how much the earnings report exceeds or falls short of investor expectations. In an efficient market, there should be an instantaneous reaction to the earnings report, if it contains surprising information, and prices should increase following positive surprises and decline following negative surprises."

and MacKinlay:[167]

[165] {Day18/69:2} –{Day18/70:5}.
[166] Damodaran, "Investment Valuation" (2012), Chapter 6 "Market Efficiency – Definition, Tests, and Evidence":
[167] "Events Studies in Economics and Finance" (1997):

"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."

586. Professor MacKinley undertook an event study comprising around 600 samples from which he observed a pattern of directionality in the majority of cases, the directional response in the price generally following the type of news (good/bad). He also at the same time noted a considerable proportion of contrarian returns.

587. The Company challenged that directionality was central to the analysis because it said it must depend to a degree on what value relevant information is released, or how that information is consistent or inconsistent with expectations at that date. The event may not always give the expected direction of travel with respect to movement in the share price.

588. The Company argues that Professor Yilmaz has placed too much weight on his opinion of the 'correct' directional movement of Sina's share price when he came to assess the way the market reacted many years after the event.[168] What is equally important, says the Company, is that unexpected news causes an immediate response in the stock price.

589. Mr Jaishankar said Professor Yilmaz:

"put…[his] thumb on the scale as to what is the "correct" direction of travel and/or quantum[169]*'*

590. The Company says there may have been many reasons why the direction of the expected share price movement was not as Professor Yilmaz anticipated. It says Professor Yilmaz ignored contrarian returns, mixed news and trading volumes.

591. As to this the Court acknowledges that one may have to look at all of the information in the earnings announcement and otherwise released on the relevant date,[170] not just the numbers in

[168] The Company argued that there is no reference to 'direction of stock price movement' in the academic articles referred to by Damodaran, Kothari or Warner in the test of whether a publicly traded stock reacts quickly following a public disclosure of value relevant information
[169] {Day8/2:1} – {Day8/5:19}
[170] Which may include, as the Company points out, updates to short term guidance, forward looking outlook, segment-related performance and operating metrics. All this was being analysed in real time by analysts from Goldman Sachs, Deutsche Bank, JP Morgan and others

the earnings announcement itself, and the actual earnings and revenue and consensus estimates to ascertain, as the Company put it, *'whether the market's response or Professor Yilmaz's expectation was wrong'*.

592. Mr Jaishankar's view was that to the extent that Professor Yilmaz found a lack of statistical significance, that should not be conclusive that the market did not incorporate the new information and is therefore inefficient.[171]

593. The Company argues that it could be because the market is not efficient or equally that the event does not impact the market's view of value, or there was a premature leak of information and the market had already reacted to the news, or there were offsetting events that, although the news did have an impact on the share price, resulted in a variation within the normal range that would have been expected.

594. The Court accepts that in cases where the surprise is small, there is always the possibility of countervailing information or other factors contradicting or reducing the impact of the earnings surprise and potentially producing an overall price impact which does not correlate with the direction and/ or magnitude of the earnings surprise.

595. However, Professor Yilmaz's event study included measures to counteract this:

i) He conducted a series of tests, beginning with a "*ground level test*", and then fine-tuned the results with two further tests which focus on announcement days when the magnitude of the earnings and revenue surprises are greater, such that the informational content of the announcement can be expected to be the dominant information on the event day;[172]

ii) He also implemented controls and further investigations to check for possible alternative explanations for any apparent inefficiency in Sina's stock price which these tests may indicate. These included checking for: (i) conflicting signals between revenue and earnings results in any given announcement; (ii) conflicting signals between the

[171] Mr Jaishankar's Supplemental Report at §9.28. Professor Yilmaz also accepted during cross-examination that if one discounted directionality from the analysis then in the "SUE" columns there were a large number of statistically significant returns and in the "Std Res" column 12 out of 20 returns were statistically significant {Day18/125:2} – {Day18/129:17}.
[172] {Day18/90:23}.

results announcement and accompanying Company outlook guidance for the next quarter; and

(iii) evidence of prior leakage of earnings information to the market and/or the market having worked out the information e.g. based on the performance of associated companies whose earnings results were already public.

596. In his final test which he described as '*the best, the strongest test I can run'* [173] he concentrated on announcement days when the earnings and revenue surprises were both large and in the same direction. Having established the strength and clarity of the signal to the market, in an efficient market he would expect that Sina's stock price would react consistently with the surprise.

597. That seems to the Court to be a good and reliable indicator because the surprise was sufficiently great and in a clear direction. The stock price reaction should be commensurate with those factors.

598. However, he found it was so in only two of the four days tested. On the other two days there was no significant movement and he said this:[174]

> "*I can tell you that in the strongest test, 50% isn't good enough. It says that when you are very sure it should have gone that way, it didn't half the time. That's not good.'*

599. It is clear to the Court that directionality is an integral part of the conventional analysis. Assessing whether information (good or bad) was correctly understood by the market and therefore incorporated into a company's share price is the purpose of an event study, which looks at the relationship between earnings surprises and share price movements.

600. The Company then argues that it would be a surprising outcome if the market for Sina's stock is inefficient, but Weibo's stock is efficient, as Professor Yilmaz concludes.

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[173] {Day18/92:20}.
[174] {Day18/113:9-13}

601. The experts agreed that Weibo accounts for about half of the value of Sina, and its revenues represented approximately three quarters of Sina's total revenue historically, given that Sina's Portal and Fintech businesses were loss making.

602. Mr Jaishankar said:

> *"A. -- the analysis, because it's highly compartmentalised, leads to a result that misses the forest for the trees, wherein both Professor Yilmaz and I accept that Weibo's market price is efficient, but disagree. But somehow he comes to the conclusion that SINA's share price is inefficient, even though he himself acknowledges in various instances in his first report that Weibo's related news and earnings have a significant impact on SINA's share price.*
>
> *Q. Well –*
>
> *A. So if I can just finish my answer. So if you look at SINA's actual consolidated results, Weibo is the most significant component of that, as opposed to the standalone. And when you look at the direction of travel of the market reaction in SINA's share price compared to Weibo's share price on those event dates, they are largely in the same direction. So I have trouble understanding how this -- as -- I know you would like to call it "rigorous", but how this event study, given the procedures that it has undertaken comes to that result. I'm unable to bridge that gap."*[175]

603. However, Professor Yilmaz had also considered the relationship between Sina and Weibo's share price movements.[176]

604. He identified that a problem with conducting a regression which uses Weibo's returns to help explain Sina's returns is that it increases the possibility of a finding of inefficiency in relation to the market for Sina shares, but he had conducted a further regression including Weibo's returns as a check and confirmed that the results were similar. By doing so he was able to identify the impact of Weibo and Sina's surprises and to conclude that even if Weibo is factored into the Sina regression it did not alter his opinion regarding the efficiency of the market in Sina's shares.

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[175] {Day8/19:17} - {Day8/20:14}. See also {Day8/26:20} – {Day8/29:6}; and {Day8/40:21} – {Day8/42:15}
[176] Professor Yilmaz's First Report §§552-553 and at Professor Yilmaz's First Report §202 fn204.

605. The Court accepts this analysis and Professor Yilmaz's evidence.

Conclusion on event studies

606. The Court prefers Professor Yilmaz's conventional approach over Mr Jaishankar's. Professor Yilmaz's approach follows the conventional methodology and is more rigorous.

607. 606. The Court does not find that Professor Yilmaz imposed an artificially high or subjective standard to his analysis.

608. 607. The Court accepts Professor Yilmaz's evidence that directionality is an important component of the examination of the cause and effect relationship between information surprises and share price movement. Trading volumes are a necessary but not sufficient indicator in themselves.

609. As to imposing his own subjectivity, Professor Yilmaz said:[177]

> "*I just follow the steps that are established. Here there is no subjective call that I am making with these steps"*.

610. 609. The Court accepts that this is the case.

611. In summary, Professor Yilmaz identified the expected direction of a price movement in response to an earnings surprise to see whether it beat or missed the consensus market expectation. As to the magnitude of the surprise, that was determined according to the score as provided by the Institutional Brokers Estimation System and the share price reaction is reflected in the residual return. These were objective measures from which he drew his conclusion.

612. The Court agrees with his conclusion for the reasons he explained and is not persuaded that the market in Sina's shares was semi-strong form efficient as at the Announcement Date.

[177] {Day18/78:3-8}. And see {Day18/79:15} –{Day18/80:1}.

MNPI

Was there material non-public information relating to Sina's shares as at the Announcement Date

TuSimple

613. Bearing in mind the burden of proof[178] on this aspect, the question for the Court is whether as of the Announcement Date the Company has shown that there was no MNPI.

614. As Kawaley J put it in *Nord Anglia,* the question for the Court is whether there was material information which was not publicly disclosed, not whether some information was made available through public filings, analysts briefings, press releases and the like.

The size of Sina's stake in TuSimple

615. As at the Announcement Date Sina owned an approximate 34% interest in TuSimple, through Sun Dream Inc.

616. It was the largest shareholder in the company and had participated in previous financing rounds. The Court accepts the Dissenters' case that there was very little public information about this investment.

617. It finds that by the time of the Announcement Date the market was not aware of the size and the value of the stake in TuSimple.

618. Mr Chao had mentioned the investment at the end of an earnings call on 19 August 2019 saying Sina:

> "*increased our investment in automobile autonomous driving company called TuSimple this quarter – in the second quarter by almost USD90 million. We believe this area – this company is leading position in the world, and we see a lot of potential there in those areas.*"

[178] *FGL* §§256 266 and 296

619. No information about the size of the stake was given until Morgan Stanley Asia's Fairness Opinion was filed with the SEC on 13 October 2020.

620. Sina's 20F filing for the year to 31 December 2019 (filed on 29 April 2020) noted that Sina had invested US$160m "*in a private company, which primarily focus on developing artificial intelligence of automobile"*. No name was given to the company.

621. The Court accepts Professor Yilmaz's evidence that:

> "*Any knowledge shareholders would have had would have to have resulted from tracking TuSimple rather than Sina news flow. Given that TuSimple was a private asset in a different sector, it is unlikely that Sina shareholders would have been tracking TuSimple news flow*".[179]

622. The Court is not satisfied that the market was aware of the size and value of Sina's investment in TuSimple from public filings and contemporaneous market commentary as at the Announcement Date.

623. Whilst some information became publicly available at some time prior to the Valuation Date,[180] the Court agrees with Professor Yilmaz that it was not possible for Sina's shareholders and the broader market to assess the value of Sina's holding in TuSimple as at the Announcement Date.

624. The Court accepts the Dissenters' case that any reasonable investor considering making a trading decision in relation to Sina as at the Announcement Date would be doing so without knowledge of the size and potential value of the TuSimple investment, which would have clearly been material.

The valuation of TuSimple and the deal with Navistar

Valuation

625. The last publicly disclosed information on the value of TuSimple was the Series D financing in September 2019 after which, TuSimple was valued at US$1.2 billion or US$8.11 per share.[181]

[179] Professor Yilmaz's First Report §192 fn 186
[180] Sina's Form 20F for the year 31 December 2019 (dated 29 April 2020), Sina's Form SC 13E3 filed on 13 October 2020 and market commentary published on 17 August 2020, 23 September 2020 and 20 November 2020.
[181] Professor Yilmaz's First Report fn 186

626. At about the time of the Announcement Date TuSimple was conducting a financing round (June 2020-November 2020) in respect of its Series E Preferred shares at an offer price of US$14.14 per share.

627. The Court accepts the Dissenters' case that the market was not aware of the higher Series E offer price until after the Announcement Date, on 15 July 2020.

628. There was initial work done by Morgan Stanley USA in June 2020.[182] They approached potential investors indicating that the placement would be for upwards of "US$250MM+" with an expected closing late in the third quarter of 2020.

629. The Court accepts the Dissenters' case that the market did not know that the anticipated valuation of TuSimple at Series E closing was over US$2 billion (an increase of at least 66% over the Series D valuation of US$1.1 to 1.2 billion) and that TuSimple and Morgan Stanley expected the Series E round to be the last round of private financing before an IPO.[183]

630. The Court is satisfied that to a reasonable investor considering a trading decision in relation to Sina, that information is likely to have had a significant impact, as well as the indication that there would be an IPO in the relatively short term.

Navistar

631. The Company says there was no evidence as to any proposed deal as at 2 July 2020 (the last trading day before the Announcement Date) and the Announcement Date (6 July 2020).

632. However, the Dissenters have shown that the market did not know that shortly before the Announcement Date on 3 July 2020, TuSimple's board of directors had approved the terms of a strategic investment and development partnership with a major US truck manufacturer, Navistar International Corporation, (Navistar) and that the deal would shortly be made public.

633. The agreement with Navistar was not signed until shortly after the Announcement Date on 10 July 2020 and this was then announced on 15 July 2020.

[182] Morgan Stanley USA's memorandum dated 15 June 2020 and email dated 23 June 2020 internal to Morgan Stanley USA
[183] Morgan Stanley Project Talos memo

634. Even though the agreement with Navistar incorporated a number of non-binding milestones,[184] under the terms of the deal Navistar would make an equity investment into TuSimple and the parties would develop an autonomous truck, which the Court accepts was an important step in TuSimple achieving the projected growth for 2023 and 2024 on which its future financing and commercial prospects were based.

635. The Court is satisfied that this information would have had a significant impact on the trading decision of a reasonable investor in respect of Sina.

636. The unaffected market trading price for Sina shares as at 2nd July 2020 did not reflect this information because it was not publicly known at that date.

637. Mr Jaishankar has made an adjustment for this. He increases Sina's unaffected market trading price by US$2.87 as at the Announcement Date resulting in an adjusted market trading price for Sina as at the Valuation Date of US$37. 20. He does this based on the pricing of Tu Simple's Series E financing round and says he takes into account the agreement with Navistar.[185]

638. The Court prefers Professor Yilmaz's view that no reliable adjustment can be made.[186]

639. The Company has not shown that there was no MNPI in relation to TuSimple.

Weibo

640. It was common ground between the experts that since Sina's value depended significantly on its 44.75% stake in Weibo, any MNPI relating to Weibo would have a material impact on Sina's trading price. The main contentious issue centres on Weibo's Q2 2020 results.

641. As the Court has found, there is evidence that these results were shared with the Special Committee by Morgan Stanley Asia before the Merger announcement in accordance with standard industry practice.

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[184] The agreement with Navistar (Navistar JDA) had terms for the parties' joint development project to develop Level 4 autonomous commercial vehicle solutions for Class 8 tractors. The agreement requires the parties to use commercially reasonable efforts to perform their obligations and failure to achieve any result or any milestone under the plan would not constitute a breach. If the joint development plan is successful, the parties were to enter into negotiations of an exclusivity and production license agreement based on the draft term sheet attached. JDA which would become binding on the parties if the Navistar JDA was successfully completed

[185] He seeks to value Sina on the basis of assessing the prospects of TuSimple proceeding to an IPO or remaining a private company on a 50% basis.

[186] Professor Yilmaz's First Report §§222-229

642. However, they were not announced until 28 September 2020, the day the Merger Agreement was announced as signed.

643. The results beat the analysts' consensus estimates both as to earnings per share and revenue. By contrast Weibo's Q1 results had resulted in a stock price decline of 18.6% within five days following their announcement on 19 May 2020.

644. The Court accepts the Dissenters' case that the Q2 results would have been available to the Company much earlier. The results were known or knowable by the end of 30 June 2020. The results would normally be announced in August.

645. Bonnie Zhang gave an account of the reasons why they were delayed (see above).

646. When they were announced on 28 September 2020 Weibo's share price reacted with a 7.5% increase on the day.[187]

647. Mr Jaishankar explained this by reference to the market looking at a medium-term horizon:

> *"A. If I can just say, Mr McQuater, we're having discussions with a very myopic view as to quarter by quarter. I think what really is driving the stock price is the question of if there's a fundamental shift in the outlook for the business vis-a-vis the medium or long-term outlook. It's no different than doing a DCF analysis, where the first little bit of the DCF isn't truly driving value, it's the long-term and the medium-term outlook that really contributes largely to the value of the company.*
>
> .....
>
> *Q. So the fact that following a poor Q1, Weibo has beaten consensus estimates in Q2 would be important information for an investor in Sina, wouldn't it?*
>
> *A. In terms of knowing what Q2 results were. But I come back to the point I made, which is an investor is looking at the medium to long long-term outlook and guidance, because that is what, at the end of the day, drives the value of the stock, not a myopic view on movement from quarter to quarter by a cent.*
>
> *Q. But it's obviously potentially important for Sina investors to know, isn't it? Would you accept that?*

[187] Professor Yilmaz's Supplemental Report §149

A. Well, if you ask "potentially important", anything can be potentially important. The question is whether it's MNPI by that definition that we discussed.

Q. I mean, if it's not important, why is the information the first thing that the market participant looks at if you're looking at what happened on the earnings call, isn't it?

A. I would say that's headline news. But if we have sophisticated investors looking at the fundamentals of the company, they're not just looking at headline news. They are looking at what is the corollary impacts, if any, in terms of a medium to long-term outlook."[188]

648. The Company has in addition provided an analysis that whilst Weibo's revenue and earnings beat consensus estimates, the analysts subsequently lowered their price targets given the fall in Weibo's expected financial performance.[189]

649. However, the Court is of the view that had they been known by the market as at the Announcement Date it is likely they would have been viewed positively.

650. Moreover, there is evidence which shows that the longer term consensus broker estimates were affected by the Company's more downbeat guidance issued on 28 September 2020, as is shown by the contemporaneous evidence.

651. On 12 October 2020 Sandra Zhang forwarded a table of broker consensus figures showing an across-the-board decline in the consensus EPS and revenue estimates, including the one-year (FY20) and two-year (FY21) estimates.

652. Bonnie Zhang asked her "*Why has it dropped so much?"* and Sandra Zhang explained that the drop is "*based on our guidance".*

653. There is also internal evidence at Morgan Stanley Asia (with their comment in brackets) that Bonnie Zhang told them that:

[188] {Day8/76:24}-{Day8/77:8} and {Day8/77:17}-{Day8/78:17}
[189] {Day8/134:4}-{Day8/134:11}, {Day8/137:17}-{Day8/137:23} and {Day8/145:22}-{Day8/146:11},

"Buyer consortium wants to sign the agreement ahead of results release for both Weibo and SINA (suspect their Q2 results may be quite good then))".[190]

654. Morgan Stanley Asia agreed with Gibson Dunn that this was at odds with the ordinary sequencing by which a merger agreement is signed after an earnings release. Although the Special Committee wanted to see whether the actual numbers were in line with the projections, it seems in the end that they relied on Morgan Stanley Asia's assessment.

655. Song Yi Zhang was somewhat vague about this and said:[191]

"Q. And here the management is telling the Special Committee advisers that they're very keen to – they're keen to sign off the merger agreement before releasing those results. So you would presumably have wanted to know what management was talking about and why it didn't want the Q2 results published before?

A.I believe they gave indications or like gave projections, estimates and projections to Morgan Stanley.

Q. To whom? They gave them to Morgan Stanley?

A. I don't recall specifically, but the subject I remember was discussed and Morgan Stanley was working on it. So Morgan Stanley seemed to be satisfied with the information they were given. I don't recall the specific – the specific issue".

656. The Court does not accept Mr Jaishankar's opinion that the information contained in Weibo's Q2 2020 results is 'value neutral'. It would, in the Court's view have had a material impact on the trading decision of a reasonable investor in respect of Sina.

Impact of COVID 19

657. The Company's position is that by the Announcement Date (6 July 2020), financial markets and Sina's share price had largely recovered (to their pre-COVID levels) following on from the market dislocation caused by the COVID-19 pandemic that began in February 2020.

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[190]see email dated 31 August 2020 summarising a call
[191] {Day3/116:6} – {Day3/116:21}

658. The Company in opening the case put it like this:[192]

> *"…you can see that by March, April, the markets have recovered or are recovering back to pre-COVID levels. So you have the dip and then you have the recovery. So the markets have effectively dealt with COVID and are now responding normally. And so as at the announcement date, which is 2 July [2020], or the last trading date, you can see the upward traverse of the market indices. Then going to Sina, if you look at Sina's performance, it's gone up just before the announcement date, and those levels that it's reaching or has reached correspond to periods pre−COVID in terms of value. It's not necessarily reached the peak that it was at, but it's still consistent with the downward trend. So although it's not matching the recovery of the markets, COVID has passed it by. It has recovered. And then… from 6 July onwards, it's tethered to the merger price."*

659. The Dissenters' position is that the financial markets had not fully recovered from COVID as at the Announcement Date so that the course of Sina's recovery, had the merger proposal not intervened, cannot be reliably estimated.

660. Professor Yilmaz is of the view that the merger was initiated at a time when the Company's share price was depressed due to the pandemic and the share price made it a poor proxy for the fair value of the Dissenters' shares as at the Announcement Date.

661. He goes on to say that while the share prices of the Company and Weibo's so-called peers recovered from the impact of COVID between the Announcement Date and the Valuation Date, the Company's share price could not recover because as from the Announcement Date it was pegged to the price being offered by Mr Chao in the course of the merger process.

662. Mr Jaishankar produced material to support his contrary view in his supplemental report.[193]

663. This shows, he says, that prior to the onset of the pandemic there had been a decline and a downward trend in the Company's share price from about mid 2018 to early 2020,[194] but that

[192] {Day1/109:8} – {Day1/110:1}
[193] Sina's Historical share price and values for market indices from 2 July 2018 to 31 December 2020 using the S&P 500 index and the MSCI China index
[194] which was acknowledged by Professor Yilmaz {Day18/158:9} – {Day18/159:14}

immediately prior to the Announcement Date the Company's share price had recovered to levels observed from approximately mid 2019 to early 2020 (prior to the onset of COVID-19).

664. Mr Jaishankar says the evidence produced by him shows that both market indices had also largely recovered by around mid 2020, prior to the Announcement Date.

665. The Court is not persuaded that the question of whether Sina's share price and the market generally continued to be impacted by COVID as at the Announcement Date can be answered by comparing the share price or an index value pre COVID and the share price or index value as at the Announcement Date.

666. The Court accepts the Dissenters' case that Sina's share price which was subject to multiple influences, not just the influence of COVID, could have been rising due to other factors despite the continuing COVID impact.

667. The Court accepts Professor Yilmaz's views on this:

> *"The fact that the price reaches the same level, it doesn't mean COVID's impacts have gone away*[195]
>
> ……
>
> "*On average, stock prices go up. The fact that you go down and you reach the level a few months later, it doesn't mean it has recovered, because compared to what it should have done, given the risk you're taking. On average, S&P 500, beginning of COVID until today for example, went up by 15% per year, right? You have to take those into account. There were a lot of China-specific COVID waves, second and third, much later than this. To argue that by July, you have really recovered from COVID just because it's the same price is, I think, misguided.*"[196]

668. Mr Jaishankar accepted in cross-examination, that as at the Announcement Date, Sina's share price remained 5.7% below its value immediately prior to the date he selected as marking the onset of the financial impact of COVID (that is, 15 February 2020).[197]

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[195] {Day18/160:12-13}.
[196] {Day18/160:18} – {Day18/161:3}.
[197] {Day8/161:6} – {Day8/162:12}.

669. Further, as Professor Yilmaz pointed out in cross-examination, it is clear from Mr Jaishankar's Chart that, as at the Announcement Date, the S&P 500 index had also not yet recovered to its value immediately prior to 15 February 2020.[198]

670. The Dissenters also pointed to another problem with Mr Jaishankar's evidence on this issue.

671. In Jaishankar 1 § 13.68 Mr Jaishankar seemed to be saying that it took the financial markets until about December 2020 to recover from the dislocation caused by COVID. He put it in the following terms:

> *"By December 2020, financial markets had largely recovered (to December 2019 levels) from the unprecedented financial market dislocation stemming from COVID-19 as first indicated by the sharp decline of the S&P 500 (some 34%) in and around March 2020."*

672. In his evidence Mr Jaishankar said this when being cross examined on which periods he was referring to in his first report:[199]

> *"Q. Now −− so your opinion in your first report was that the financial markets had not fully recovered by December 2020, although they had largely recovered; correct?*
> *A. No, that's not what it says.*
>
> *Q. What does it say?*
>
> *A. Well, it says "by December 2020". So I'm not suggesting that sitting in November 2020, it hadn't largely recovered. I was just making commentary around the valuation date. I think when you look at the appendix where I speak about the general market overview, you can see that we discuss the impact of the COVID pandemic and decrease in market prices generally in March, April and then it coming back towards May/June.*
>
> *Q. Well, focusing on what you say here, the sentence I just read, you appear as a matter of English to be saying that the financial markets had not fully recovered by December 2020, although they had largely recovered; correct?*

[198] {Day18/161:11-14}
[199] {Day8/152:4} – {Day8/153:15}

A. Can you say that one more time, Mr McQuater?

Q. As a matter of English, what you seem to be saying here in these sentences that I just read is that the financial markets had not fully recovered by December 2020, although they had largely recovered?

A. Yes, I haven't put it in the absolute.

Q. They'd largely recovered by then. So it follows that in the period between July and December of 2020, that's to say your interim period, the financial markets were still going through a process of recovery from COVID?

A. That was not the intent of this statement.

Q. That's the implication of this statement, isn't it? If they've largely recovered by December, they're obviously going through a process of recovery between July and December?

A. Well, not necessarily. It could be largely recovered by July, and it could also be largely recovered by December.'

673. In Jaishankar 2 §§ 9.60-9.69 he says that the financial markets and Sina's share price had largely recovered from the impact of COVID by a point immediately prior to the Announcement Date.

674. He was asked about this:

"Q. Now −− so you've changed your view by this point about recovery from COVID?

A. ***Again, as I said, Mr McQuater, my views did not change. You know, going back to the first report, as you would correctly point out, one couldn't do a walk−forward if one was of the view that the COVID−related market dislocation persisted as at the announcement date. So I am telling you that was a slip****.*

Q. Well, I suggest that what happened was you woke up to the fact between these two reports that your view about December recovery was a problem for your walk−forward. So you decided to change your mind about the effect of COVID on the announcement date.

A. I respectfully disagree.

Q. Now −− and also, if we look at {D/4/50}, paragraph 6 −− 9.69, you say: "Further, as indicated ... in the chart, both the S&P 500 and MSCI China Index had recovered to pre−COVID−19 levels in and around mid−2020 prior to the Announcement Date. Well, that's the opposite of what you've said in your first report, isn't it −− we looked at that −− where you told us that the overriding factor that influenced the broader market, ie the Standard & Poor 500, in and around the valuation date was the economic uncertainties associated with COVID?

A. I think I have made my point clear on this.

Q. Well, I'm not sure I understand what your point is as to why you have said two different things about the Standard & Poor 500 being affected by COVID.

A. ***I will repeat myself. I think the words that you see in the first report are an error. That was not my view as to when the COVID−19−related market dislocation had effectively ended****."*[200] *(emphasis added)*

675. The Court has decided not rely on Mr Jaishankar's evidence on this point. He was unsure as to why he had originally said the financial markets had largely recovered by December 2020,[201] when his view was apparently that they had largely recovered by July 2020.

676. Professor Yilmaz also says Mr Jaishankar's comparison with a share price months or years earlier is not an accurate guide to the present value of a stock.

677. Mr Jaishankar said in evidence:[202]

[200] {Day8/159:15} – {Day8/160:23}
[201] See also §3.3.7 of the Joint Memorandum
[202] {Day8/165:12} – {Day8/166:5}.

> *"Q. … the mere fact that the indices have achieved a level which they also achieved on a date prior to the onset of COVID does not mean that those indices or the financial markets generally had recovered from the impact of COVID by the announcement date, because the indices are subject to a range of factors, and any number of those factors could have produced a rise in the indices without necessarily meaning that they are no longer affected by COVID.*
>
> *A.I haven't done a precise analysis, sort of like an event study, to figure out, you know, what was the impact of COVID and what was not. All I'm saying to you, Mr McQuater, is when you look at that chart and you see the dip in the broader market through March/April, it's largely recovered by the middle of 2020. And my understanding of what markets we're talking about,* ***at least by looking at these prices, was that that dislocation in the share price had gone away. …"****(emphasis added)*

678. However, the Court accepts the Dissenters' case that '*looking at these prices'* does not answer the question as to whether the COVID impact *'had gone away'* without a more rigorous analysis.

679. When questioned about the impact of Covid in the context of historical observed betas, Mr Jaishankar referenced his experience of conducting several valuations around the relevant timeframe and throughout the period March-May 2020.

680. He noted that while Professor Yilmaz relied on empirical studies and other research as the basis for his analysis, Mr Jaishankar noted that this was*, "at odds with [his] professional experience"*:

> *"A. …same company, I can tell you in my experience that using data in the post-COVID period did in fact materially change the historical observed calculated betas. So what I have tried to do, based on my experience, was try and look at data points, both pre-COVID as well as at the announcement date, given my views with respect to Weibo, as we've discussed before, and I tried to strike a balance in terms of what would be a reasonable beta, looking both at two-year and five year historical betas at both dates. I'm not necessarily disagreeing with Professor Yilmaz. I'm just saying that it is at odds with my professional experience.*

…

A. And -- okay. That's fair enough. Generally, in a normal year, I would agree with you, Mr McQuater. I would have just one point in time. But I think 2020 was a very specific year, where we had market dislocation in, I would say, March, April and May. And my experience has been, as I said to you, Mr McQuater, having done several valuations around this time frame, I did find that when I looked at historical betas which included and excluded the COVID-affected period, I got drastically different results that I could not reconcile. So I was trying to be cautious and methodical about it."[203]

681. The Court prefers an empirical studies based approach and the research-based approach as used by Professor Yilmaz.

682. Professor Yilmaz's view that Sina's share price continued to be affected by COVID as at the Announcement Date is, he says, reinforced by the comparison he makes with the performance of the share prices of other Chinese online media companies which Sina identified as its industry competitors in its 20-F filings.

683. Mr. Jaishankar's view was that it makes sense to look at the impact of COVID on a macro economic level. His evidence was as follows:

"A. …the issue of COVID−19 is a macroeconomic factor, as opposed to an industry−specific factor, which is why you look at more broader indices, be it the S&P 500 or the MSCI China Index. When you start narrowing it down to very specific stocks, Mr McQuater, I think you now have issues around, for example, company−specific news.

Q. Well, there might be issues of company−specific news if it were to be identified. But if you've actually got companies that are far more comparable to Sina, then you're going to get more of an idea of how −− of whether COVID was still impacting those companies, because they are more similar companies, rather than the bucket of companies represented by these large indices?

[203] {Day10/135:8} - {Day10/135:20}; and {Day10/137:11} - {Day10/137:23}

A. I would disagree with that. I think turning the magnifying glass down, it appears it actually exacerbates the issue. I think you have to keep it at a higher level, given that the nature of the issue is at a higher macroeconomic level,"[204]

684. However, although it is axiomatic that COVID was a global pandemic with macro economic effects, the Court accepts the Dissenters' case that it had industry specific and company specific impacts as well.

685. The Court accepts Professor Yilmaz's evidence that comparable companies identified by Sina in its 20-F filings were able to mount a recovery from the impact of COVID on their market prices, albeit at different rates of recovery and to different degrees.

686. The Court accepts that by contrast, Sina's market price remained tied to the Management Buyout offer price and did not follow a similar recovery path.

687. As to the impact of COVID on the market in the 3rd and 4th Q 2020, the Court was referred to:

i) the Barclays analysts' report of 28 September 2020 regarding Weibo's Q2 results. This included the observation that "*Generally, we see the China ads market is gradually recovering from the Covid-19 impacts*", and a recommendation that during the earnings call attention should be paid to: "1) *Updates on Covid-19 impact on China online ads market …; 3) Update on Weibo's most recent recovery trend from the pandemic period"*

ii) the HSBC analysts' report of 29 September 2020 regarding Weibo's Q2 results. The report includes various commentary reflecting the continuing impact of Covid, including: "*We believe Key Account (KA) revenue should recover first …, while SME may need more time to recover to pre-pandemic level;* and *on top of the lower ad demand from local service advertisers due to the pandemic we continue to see the oversupply of ad inventory as the overhang impeding Weibo's SME revenue recovery'*

iii) the JP Morgan analysts' report of 9 November 2020, previewing Weibo's Q3 results. Under the heading "*Investment Thesis, Valuation and Risks"* the downside risks

[204] {Day8/167:15}-{Day8/168:8}

included "*a prolonged impact from COVID-19*", and the upside risks included "*an earlier than expected end to the COVID-19 outbreak"*

688. Mr Jaishankar said, by reference to Weibo's recovery:

> *"Q. What I'm suggesting is that what we're seeing here is – because you say, just to remind you, in relation to that, at least you say in your second report, that by the announcement date, the Weibo price had −− I think you used the phrase "largely recovered" – largely recovered from the impact of COVID by –*
>
> *A. I may have said something to that effect.*
>
> *Q. −− 6 July. Here we are on 28 September, and these analysts obviously don't think Weibo's recovery is anything like complete.*
>
> *A. We are talking about two different things. You're talking about recovery in the business as it occurs versus the recovery in the stock price, as I alluded to earlier in the day, which is forward−looking with an expectation of recovery.*
>
> *Q. So you accept that Weibo's business hadn't fully recovered. It was on its way to recovery, but not fully recovered by the announcement date or by this date, 28 September?*
>
> *A. Well, there was uncertainty around the impact of COVID as you sat at that time. So you're getting better sightlines with the passage of time. I'm not disputing that fact*[205]
> …….
>
> *"A. So, Mr McQuater, I have clarified my view on market dislocation and recovery−related timing. And the analysts' reports and other materials that we looked at spoke to actual recovery in the businesses as at that time, say in the fall of 2020. And, as I said to you in a previous exchange, stock markets are forward−looking. So they do take some view as to what is happening in the medium to long run with respect to COVID. You see that −− you see the reduction in the index, Mr McQuater, in March,*

[205] {Day8/138:8} - {Day8/139:5}. See also {Day8/136:18}-{Day8/137:13}

> *when it dips by some 35% and comes back. I'm not saying that COVID−related impacts to the business are gone; I'm just saying that when you look at stock prices, which by their very nature look to the future, it's largely accounted for.*[206]

689. The Court does not accept this analysis because whatever the market might have expected and have priced into Sina's shares as at the Announcement Date, this must have been based on the information available at that time and the analysts' reports demonstrate that there was a continuing development of the market's expectation of recovery through to Q4 2020.

690. It is also of some relevance that in the Morgan Stanley Asia Fairness Opinion materials of 28 September 2020, the Company's view (which even a forward looking market participant would not have had), was that the impact of COVID was continuing.

691. In the section on "*SINA Valuation Analysis*" under the heading "*Company Management Projections Overview"*, Morgan Stanley Asia noted that "*Company management has advised that the projections are lower than broker consensus due to:… The impact of Covid-19 to last longer than market expectations (V-shaped recovery)".*

692. For all these reasons the Court accepts the view that Sina's share price was affected by COVID and that its adjusted market trading price as at the Announcement Date is not a suitable proxy for the fair value of the Dissenters' shares as at that date.

Conclusion on Sina adjusted market trading price

693. Considering the Court's views as expressed above on market efficiency in Sina's shares, MNPI, and COVID market dislocation, the Court concludes that no weight can be placed on Sina's adjusted market trading price as a proxy for fair value.

694. In all the circumstances it is also in the Court's view not appropriate to make adjustments to the market trading price to take into account the MNPI the Court has found [to have existed].

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[206] {Day8/164:5-{Day8/164:18}.

Sina walk forward

695. Mr Jaishankar used a standard regression analysis to estimate the relationship between the share price return for Sina's shares and the market and industry factors using historical data from the two-year period prior to the Announcement Date. As with Weibo he used the Market Index as the market factor and the Equal-weighted Industry Index. He adjusted the Unaffected Market Trading Price of Sina on 2 July 2020 (US$36.67) downward to US$34.33. He adjusted Sina's AMTP to US$37.20 (i.e., an additional US$2.87) to account for TuSimple's Series E funding round.[207] Mr. Jaishankar says this is a reliable method by which to adjust the Company's Unaffected Market Trading Price as at 2 July 2020, adjusted for TuSimple's Series E financing round as at the Valuation Date.

696. Professor Yilmaz disagrees with Mr Jaishankar's 's walk forward methodology.

697. The Court accepts Professor Yilmaz's view that it was not possible to calculate an adjusted market trading price for Sina with reasonable accuracy because, for the reasons given above, COVID continued to have an impact on Sina's market price after the Announcement Date and also for the reasons given above, there was further MNPI relating to TuSimple's IPO and Weibo's results for which no reliable adjustment can be made.[208]

Sum of the parts

Sina's interest in Weibo

Professor Yilmaz's view

698. In Professor Yilmaz's opinion the market in Weibo's stock was efficient through to the Valuation Date, and Weibo's market price reliably reflected its intrinsic value as at the Valuation Date. In his view it is therefore appropriate to value Sina's interest in Weibo by reference to the market price of Weibo's shares as at the close of business on the day before the Valuation Date (that is, US$45.94 per share). On this basis, Sina's interest in Weibo is worth US$45.94 x 101.78 million shares = US$4.676 billion.

[207] No downward adjustment is made for the negative event that was the ANT financial IPO in the interim period.
[208] Professor Yilmaz's First Report §§ 222 to 229

699. The Court was not persuaded that Professor Yilmaz's primary methodology, using a market capitalization analysis in relation to this issue, provides a reliable valuation for the reasons set out below relating to the announcement of the merger.

700. The Court also notes that his DCF 'cross check' is at variance to his market capitalization result.[209]

Valuation of Weibo by market price

701. Professor Yilmaz conducted a test of market efficiency. An analysis of Weibo stock price reaction to past announcements of the Company's financial results indicated that Weibo was trading in an efficient market up until the Valuation Date.

702. Mr Jaishankar also concludes, after considering general overarching factors, liquidity factors, *Cammer* factors and market efficiency by means of an event study, the market trading price was efficient prior to the Announcement Date.

Announcement

703. However, the experts differ significantly as to the impact of the announcement of the merger. Mr Jaishankar says that as at the Valuation Date the market price was not probative of fair value because the share price was tainted by the announcement and expectations surrounding the transaction and no longer reflected its intrinsic value.

704. He points out that on 6 July 2020 the Company issued a press release in respect of the New Wave proposal and the Weibo stock price increased by 18%.

705. He says:[210]

> *"That Weibo's stock experienced a meaningful price reaction on these dates – without the presence of other countervailing company specific news being disseminated in the markets – is probative of Weibo's share price i) being affected by announcements*

[209] Giving at a US$49.77 per share value , US$5.186 billion as Sina's interest in Weibo ,which is US$ 510 million more than the market capitalisation result.
[210] Mr Jaishankar's Supplemental Report § 9.50

related to the [Management Buyout] and ii) trading on factors beyond those related to its intrinsic value."

706. Similarly, on 28th of September 2020 the Company issued a press release that it had entered into a merger agreement and the Weibo stock price increased by approximately 7.4% .

707. By contrast Professor Yilmaz says there is no reason to conclude that the evolution of Weibo's stock price was affected by the announcement of the management buyout. He says the stock price[211] of Weibo on 22 December 2020, the day before the Valuation Date and immediately before the EGM that evening, provides a natural starting point for the valuation of the Company's stake in Weibo and there is strong evidence that the Weibo stock price was unaffected by the announcement and expectations surrounding the transaction.

The Court's assessment

708. On this issue the Court prefers Mr Jaishankar's evidence that Weibo was no longer trading solely on fundamentals after the Announcement Date and was reacting to news in respect of the impending privatisation of Sina and the impact it would have on Weibo.

709. It follows that Weibo's market trading price was no longer a reliable indicator as at the Valuation Date of the fair value of Weibo's shares.

710. This is evidenced by Mr Jaishankar's analysis that, on the Announcement Date, Weibo's share price had an increase of 18%,[212] attributable in large part to the announcement of the merger proposal. Trading volumes also increased on the Announcement Date when compared to previous trading days.[213]

711. Professor Yilmaz explained this increase was attributable to the impact of the Shanghai Stock Exchange[214] which he says had risen 5.7% in overnight trading due to some positive market commentary, the trade press, and favourable macro data on China's economy[215].

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[211] of US $45.94

[212] 13 % in excess of the market and peer indices

[213] The Court was also referred to: a Barrons article dated 6 July 2020 which stated that, "some investors apparently think the deal has positive implications for Weibo's future status. Weibo shares spiked 19%, to $40.13, following the news"; and a JP Morgan analyst report, dated 8 July 2020, which tied the Sina announcement to the Weibo share price increase.

[215] Section B1 (§133 onwards) of Professor Yilmaz's Supplemental Report

712. He points out that Weibo was one of several US-listed China-focused tech stocks to experience large price gains on 6 July 2020, following an increase in the Shanghai Composite index overnight.

713. He also relied on Weibo's positive results and said that market rumours were not tied to Sina's privatisation. He was of the view that if (as Mr Jaishankar had concluded) both Sina and Weibo had stock prices indicative of fair value prior to July 2020, then there is no basis for suggesting that the Weibo stock price stopped being indicative of fair value on the Announcement Date of 6 July 2020.[216]

714. Although Sina's impending privatisation was mentioned in the trade press,[217] Professor Yilmaz was of the view that there was no impact from the announcement and in order to show that Weibo's price was affected one would need to establish a permanent Weibo price impact based on news concerning the privatisation.[218]

715. Professor Yilmaz was of the view that an increase in trading volumes (up 45%) and a share price increase of 7.4% on the Merger Agreement Date (28 September 2020), was due to Weibo's results being announced on the same day.

716. Against this, the Company points out that the earnings release reported that EBITDA had declined 21% and net revenues from component parts of the business had also decreased.

717. The Court was also referred to analysts' reports[219] which also bear out that the Q2 2020 results, whilst beating market expectations and estimates, caused them to reduce their price targets taking into account the expected future financial performance of Weibo.

718. For example, an HSBC report of 29 September 2020 referred to the privatisation and said:

> "*Trade beyond fundamentals: Near term, we think Weibo's share price may trade on the news flows around the privatisation of its parent, Sina, beyond just fundamentals, so there could be volatility ahead."*

[216] §156 of Professor Yilmaz's Supplemental Report
[217] See§ 133 of Professor Yilmaz's Supplemental Report
[218] {Day17/13:20} – {Day17/14:7}
[219] The Court was referred to reports from Barclays, HSBC, JP Morgan, UBS

719. Weighing up the evidence, it seems to the Court that a significant part of the 18% spike on the Announcement Date was directly attributable to the merger, even against the general rise of stocks on the Shanghai Stock Exchange earlier that day.

720. The Court notes the Company's case (having regard to the empirical evidence) that after the 5.7% rise in overnight trading, from 8:30am to 10:30am (after the Sina announcement) Weibo's shares increased in price by a further 10.6%, which was more than double any other security.

721. The Company also referred the Court to the fact that this had happened previously when Mr Chao announced he was buying into Sina on 1st June 2015.[220]

722. The Court accepts that there is no reason to think that the announcement of the privatisation proposal of Sina did not have a significant impact on the Weibo share price, albeit that there had also been some positive news concerning China's economy at about the same time. The Court is satisfied that contemporaneous market evidence shows that Weibo's trading price trend diverted from its decline which related to its business fundamentals, to outperforming the indices in response to and by reason of Sina's privatisation.

723. In summary, the Court accepts Mr Jaishankar's evidence:

a. concerning the decline in Weibo share price since 2018 which then had a reversal at the Announcement Date followed by its performance after the Announcement Date which outperforms the indices the Company put forward.[221]

b. that there is no evidence to show that Weibo's fundamentals had changed against the competition, the operating environment in late 2020 and its own forecasts.

c. that the statistically significant movement in Weibo's share price as at the Merger Agreement Date on 28 September 2020 is also largely related to the earlier announcement of the signing of the Merger Agreement, such that news that the merger had been agreed (with greater deal certainty) had an impact on Weibo's share price.[222]

[220] Weibo's Market Trading Price increased from c.US$13 per share to up to US$17 per share in the following days.
[221] Company closing submission §338a
[222] Following the announcement of Weibo's Q2 2020 results on the same day, analysts reduced their estimates of Weibo's expected future performance -see further below in relation to alleged MNPI regarding Weibo

d. that the price increase from the Announcement Date to the EGM in Weibo's share price, which was derived from Sina's privatisation should be excluded from any fair value consideration as it was an impact of the merger to which the Dissenters are not entitled to benefit, in principle.

724. The Court does not accept Professor Yilmaz's contrary view that the increase had quickly dissipated after the announcement and that Weibo traded on its intrinsic value between the Announcement Date and the Valuation Date.

725. Professor Yilmaz said:

> *"But if this was an impact on the privatisation, and unless the privatisation changed, and it hasn't in those days, you would have expected that impact to remain, but the impact disappeared. I cannot explain the change in the stock price with the movements in the market and the index. That's what negative 13% says".*[223]

726. The Court prefers the view of Mr Jaishankar that this is a reflection of the continuing downward trend of Weibo's share price.

727. Professor Yilmaz also said:[224]

> *"SINA has a huge ownership in Weibo, and one of the reasons why SINA's controlling shareholder -- this is not an assertion. This is -- we're hypothesising now. One of the reasons why SINA's control shareholder might be buying Weibo is because Weibo was worth more, given insider's information, than what the market suggests. So when a takeover offer is made, the price of Weibo would jump because market would conclude that this is good news about Weibo. But that -- by the way, that didn't happen. But if it had happened, that's not a good reason not to use Weibo's stock price because it was correctly aggregating the MNPI, material non-public information, into the prices."*

728. And:[225]

[223] {Day17/14:1} – {Day17/14:7}
[224] {Day16/153:18} – {Day16/154:6}
[225] {Day16/168:24} – {Day16/169:12}

> *"Q. Just for the purposes of our discussion at this point, if there was no relevant news on 6 July* [2020] *that related to Weibo, then the movement in Weibo's shares following the merger announcement in relation to SINA could be directly correlated to the merger announcement affecting the Weibo share price; correct?*
>
> *A.Yes, but that doesn't still mean that Mr Jaishankar's statement is correct, because that price jump could have been explained by fundamentals of Weibo's value, which meant that you can still use Weibo's stock price as a proxy for its fair value, because all we learned is that Weibo is more (inaudible) the fact that its parent company is taken private by the controlling shareholder is a strong signal of the assets."*

729. He also said:[226]

> *"Q. … if the increase is caused by that signalling event – let's put it that way. Are you happy with that label?*
>
> *A. Yes.*
>
> *Q. Then that is a consequence, regardless of what the detail may be in terms of why that's happening, but that's a direct consequence of the announcement that's made by SINA; correct?*
>
> *A. There is a difference in that there is -- let's say insiders think this thing is worth 40, market thought it was 30 only, and people understood that the buyer, the insider is trying to take advantage of that misvaluation and makes an offer. The price jumps, and the next day, he changes his mind for whatever reason, or legally he was not allowed to. That impact will remain because that was fundamental information about Weibo. So it is not really related per se to the takeover. So it's not really an artefact of the takeover; it's an artefact of information disclosure'*

730. The Court has carefully considered this rather nuanced evidence from Professor Yilmaz, but prefers Mr Jaishankar's view that Weibo's market price was affected by the announcement.

731. Once the news had broken of the merger and there was speculation and a price hike, the Court accepts that it is very difficult to measure and extract its effect going forward.

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[226] {Day16/170:12} – {Day16/171:5}

732. In other words, the Court accepts Mr Jaishankar's evidence that stripping out "'the taint" could not be reliably done over the period in question.

733. The Court accepts Mr Jaishankar's evidence that:

"once it's baked in, you just don't know how the impact of that – of that taint, if you will, changes on a day-to-day basis. I think the point I'm making is, once it's in, and I know you don't accept it's in, but once it's in, there is no clear -- clean way of unwinding that impact".[227]

734. As a consequence of these findings, the Court accepts the Company's case that Weibo's unadjusted market trading price at the Valuation Date cannot be relied upon as a proxy for its value in an SOTP analysis for Sina's share price.

735. It accepts Mr Jaishankar's view that as at the Valuation Date the market price was not probative of fair value because the share price was tainted by the announcement and expectations surrounding the transaction no longer reflected its intrinsic value.

Walk forward of Weibo's market trading price

736. Since Mr Jaishankar says the market price of Weibo's shares was affected at the Valuation Date which the Court accepts, he estimates what the market price would likely have been on the Valuation Date but for the announcement of the merger, by 'walking forward' from the last unaffected trading day before the announcement.

737. To perform this analysis Mr Jaishankar uses a standard regression analysis to estimate the relationship between the share price return for Weibo's shares and the market and industry factors using historical data from the two year period prior to the announcement date.

738. Mr Jaishankar also examined the new information that the Company and Weibo disclosed during the interim period between the Announcement Date and the Valuation Date including the Q2 2020 earnings release and analysts reports, and concluded that he was not aware of anything that affected Weibo's business on a fundamental basis during the interim period such

[227] {Day8/124:8} – {Day8/124:13}

that Weibo's share price might have moved on a different trajectory vis-à-vis the observed relationship with the market and industry factors.[228]

739. Having considered this evidence the Court does not accept that Weibo's adjusted market trading price as at the Valuation Date (i.e., the market trading price as at the Valuation Date for Weibo had Weibo's share price not been affected by the Merger) can be reliably estimated using the method adopted by Mr Jaishankar (which resulted in a price of US$31.74[229]).

740. The Dissenters point out that this is 31% below Weibo's actual trading price at the Valuation Date and 6% below its trading price at the Announcement Date.

741. Professor Yilmaz criticises Mr Jaishankar's use of a negative intercept, his hypothesis that Weibo's share price was suffering a downward trend and says that that the 2 year 'walk-forward' from the Unaffected Market Trading Price as at 2 July 2020 was additionally and negatively impacted by COVID market dislocation.

742. The Court accepts Professor Yilmaz's criticism of the method Mr Jaishankar used which renders his result unreliable.

743. The Court notes the Company's case that there was a downward trend for the Weibo share price from 2018 and that its commercial and operating reality was that it was facing increasing competition from new providers. It had also been ordered to close its video and audio programme services in 2017. The Company says it was also experiencing a declining growth in users.

744. However, the Court agrees with Professor Yilmaz that the use of a negative intercept (-0.2% daily) is unreasonable as it implies an annualised negative return of 40% which is too high. It accepts his view that the intercept should be set at zero.[230]

745. Mr Jaishankar's evidence was that one should not set aside the negative intercept which was part of the overall statistical equation unless there are good reasons to do so.[231]

746. The Company's case was that a main driver for the privatisation of Sina (and its most valuable asset, Weibo) was that they were facing negative business, commercial, competitive, political,

[228] §§13.103 – 13.104 of Mr Jaishankar's First Report
[229] Mr Jaishankar's DCF analysis resulted in a per share value of Weibo of US$37.70
[230] §§158-159 of Professor Yilmaz's Supplemental Report
[231] {Day11/42:20} – {Day11/42:22}

and regulatory headwinds. Mr Jaishankar said that it would not be right or realistic to remove the market consensus of the Weibo share price which affected Sina's strategy.[232]

747. Mr Jaishankar answered Professor Yilmaz's annualised negative return of 40% criticism as follows:[233]

> *"A. As I said, my model is looking back two years in terms of the regression analysis, Mr McQuater. And the results are what they are. And I'm not disagreeing with you that, you know, if there's some sort of a fundamental shift in the business where the near-term historical trajectory is not a good indicator for the future, I may have considered that. But given the fact that that trajectory was one of the rationales for the transaction, and coupled with the fact that the interim period was a matter of months, I did not consider that to be an issue."*

748. The Court accepts that the interim period for the purpose of the walk forward analysis was for only a short period of time (being a matter of months) and accepts Mr Jaishankar's evidence that it would not be unusual to expect a negative return in those circumstances.

749. However, his calculation produces a 19.5% reduction for that period and fails to account for the fact that it coincides with a downturn for Weibo's business which was unlikely to be a permanent factor in its performance.

750. The Court agrees with the Dissenters' case that his returns model did not capture the characteristics and drivers which contributed to producing Weibo's returns and missed the indicators of recovery. The Court accepts Professor Yilmaz's view that it should not be factored into any AMTP calculation.[234]

751. Further, as with Mr Jaishankar's AMTP calculation for Sina, his attempt to walk forward Weibo's market price suffers also from the problem that it does not account for the continuing impact of the dislocation caused by COVID into Q4 of 2020.

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[232] {Day11/41:24} – {Day11/42:13}
[233] {Day11/43:12-22}
[234] Professor Yilmaz's Supplemental Report §§ 160-16, see also JP Morgan and UBS analysts reports of 9 November 2020 and 14 December 2020.

Mr Jaishankar's DCF methodology

752. The Court finds that the DCF methodology Mr Jaishankar uses and the evidence supporting it, is a more reliable basis for valuing Sina's interest in Weibo than taking its share price at 22 December 2020.

753. The main issue in contention between the experts was the weighted average cost of capital (WACC), also known as the discount rate.

WACC

754. WACC is the overall rate of return expected for a particular investment. It is based on a weighted average of the (after tax) cost of debt and the cost of equity. It is traditionally calculated by the capital asset pricing model (CAPM) which assumes that the return an investor requires for holding an investment instrument is a function of the risk concerning that instrument.

755. The cost of equity (discount rate) is determined by a formula which includes the risk-free rate (RFR), the equity risk premium (ERP), the country risk premium (CRP) and beta *[Cost of equity=RFR+beta x ERP+CRP].* A size premium is sometimes also added.

756. Although Mr Jaishankar and Professor Yilmaz agree that Weibo's debt / equity weightings should be 15% / 85% respectively, they do not agree as to the quantum of the WACC that should be applied.

757. The Court does not agree that the Dissenters' challenge to Mr Jaishankar's calculation of the risk of achieving the projected results during the projection period and beyond, which gives his discount rate (WACC) is valid.

758. Professor Yilmaz calculates a WACC of 7.90%. The Court agrees with the Company that this is too low and translates to a terminal multiple of 21.8x, which is too high. This multiple is nearly double the terminal multiple calculated by Mr Jaishankar, which is based upon a WACC, applicable to Weibo and as estimated by Mr Jaishankar, of 11.86%.

759. The causes of the differences between the experts were summarised by the Company as follows:[235]

a. Mr Jaishankar has adopted a modified CAPM[236], but Professor Yilmaz has used the "pure" or "basic" CAPM model;

b. Mr Jaishankar has used a normalised risk-free rate of 2.5%, whereas Professor Yilmaz has adopted a "spot" risk-free rate of 1.45%, using the spot rate of interest for the 20-year US Treasury bond prevailing as at 22 December 2020 (which for these purposes is the Valuation Date). This has a net impact of approximately 1.05%;

c. Consistent with his adoption of a modified CAPM and a normalized risk-free rate, Mr Jaishankar has selected a normalised ERP of 5.5% and a Beta of 1.65 and has not incorporated a Blume adjustment into the value for his adopted Beta. This approach renders an equity and industry risk premium of 9.08%. By contrast, Professor Yilmaz has selected an ERP of 6.11% and has used a Blume-adjusted Beta of 1.199 (adjusted from 1.299). This ERP / adjusted Beta combination produces an equity and industry risk premium of 7.33%. This has a net impact of approximately 1.75%;

d. Mr Jaishankar has included a CRP of 1.50%. Professor Yilmaz has not included a CRP; and

e. Mr Jaishankar has also included a size premium of 0.37% (at the midpoint, with a range of 0% to 0.73%). Professor Yilmaz has not included a size premium.

760. The Court will set out its reasoning for its decisions on these matters against each point of difference.

CAPM

761. Mr Jaishankar says that when assessing the cost of equity it is reasonable to assume that investors in a particular company are not well diversified and do not hold a diversified market

[235] Company closing submissions §288
[236] Capital asset pricing model

portfolio so that a modified CAPM approach, for the reasons given by Mr Jaishankar,[237] better takes into account unsystematic risk within the business for which an investor would demand compensation in the form of a higher rate of return.[238] He is therefore of the view that unsystematic risk associated with the business and inherent in the cash flows is relevant.

762. Because Mr Jaishankar's approach to a modification of the pure CAPM theory reflects his view "*that not all investors were fully diversified*",[239] the cost of equity under the modified model considers systematic (or market wide) risk through the addition of an equity risk premium impacted by beta, and considers unsystematic risk through the inclusion of additional risk premia over and above the cost of equity.

763. The Company referred to Professor William Sharpe:[240]

> *"The CAPM was and is a theory of equilibrium. Why should anyone expect to earn more by investing in one security as opposed to another? You need to be compensated for doing badly when times are bad. The security that is going to do badly just when you need money when times are bad is a security you have to hate, and there had better be some redeeming virtue or else who will hold it? That redeeming virtue has to be that in normal times you expect to do better. The key insight of the Capital Asset Pricing Model is that higher expected returns go with the greater risk of doing badly in bad times. Beta is a measure of that. Securities or asset classes with high betas tend to do worse in bad times than those with low betas. The CAPM was a very simple, very strong set of assumptions that got a nice, clean, pretty result. And then almost immediately, we all said: Let's bring more complexity into it to try to get closer to the real world. People went on - myself and others - to what I call "extended" Capital Asset Pricing Models, in which expected return is a function of beta, taxes, liquidity, dividend yield, and other things people might care about. Did the CAPM evolve? Of course. But the fundamental idea remains that there's no reason to expect reward just for bearing risk. Otherwise, you'd make a lot of money in Las Vegas. If there's reward for risk, it's got*

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[237] Appendix F of Mr Jaishankar's First Report and Appendix C of Mr Jaishankar's Supplemental Report
[238] This results in a normalised risk-free rate, a non-Blume adjusted Beta, and a size premium, seeking to account for risk not otherwise falling within the confines of the pure / basic CAPM Model. He is of the view that the Company also referred to *In the Matter of Qunar Cayman Islands Limited* [2019] (1) CILR 611§§ 272 and 273, *In the Matter of Shanda Games Limited* [2018] (1) CILR 352 (Court of Appeal) and *In the Matter of Trina Solar Limited* (Unrep, Grand Court, 23 September 2020), §8(g)(v) where a size premium and CRP were applied
[239] {Day10/73/21} – {Day10/81:10} and {Day10/77:13} – {Day10/77:15}
[240] Nobel prize winner in Economic Sciences in 1990

to be special. There's got to be some economics behind it or else the world is a very crazy place. I don't think differently about those basic ideas at all."

764. The Company also referred to the fact that Professor Damodaran also recognised that modified CAPM models had a role to play.[241]

765. In this regard the Court notes Professor Yilmaz's view on the 'the law of one price', arbitrage and mispricing,[242] but does not accept his conclusion that Mr Jaishankar's modified CAPM is unprincipled and arbitrary.

766. The Court accepts Mr Jaishankar's assumption that not all investors were well diversified and held a diversified market portfolio.

767. In this case the Court has decided that it is right to approve Mr Jaishankar's use of a modified CAPM which then permits the proper application of the other components he adopts as part of his DCF calculation to reflect risks which he identified which were not otherwise captured by the pure model.

Use of Kroll's normalised risk-free rate by Mr Jaishankar[243]

768. The US risk-free rate of return is typically measured by examining the rolling twelve-month average yields for US government-issued treasury bonds with a term of approximately 20 years. The yields on US government-issued treasury bonds are used as a proxy for the risk-free rate as markets perceive these securities as the closest financial instrument to a truly 'riskless' asset.

769. As at the Valuation Date the spot US 20-year treasury yield was 1.45%. Professor Yilmaz uses that rate.

770. However, the Court accepts Mr Jaishankar's view that this rate of return was artificially low, due in large part to the outbreak of COVID-19, the actions taken by central banks and the introduction of other fiscal stimuli by a number of governments around the world in response to the pandemic.

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[241] Investment Valuation, Tools and Techniques for Determining the Value of Any Asset" (3rd Ed)
[242] Professor Yilmaz's Supplemental Report §§ 193 -202
[243] See §§ F.22-F.24 of Appendix F of Mr Jaishankar's First Report and §§ C.10-C.11 of Appendix C of Mr Jaishankar's Supplemental Report

771. The Court agrees with Mr Jaishankar that to use this artificially depressed spot rate rather than normalising a risk-free rate would result in a lower WACC and therefore a higher valuation, which would not be reasonable in these circumstances.

772. The Court accepts that, as was apparently the case during the global financial crisis of 2007 to 2009, with interest rates at unprecedented lows, it is reasonable and appropriate to overcome the inconsistency between low interest rates and the market values of equities by normalising the risk-free rate for use in the CAPM, as Mr Jaishankar suggests.[244]

773. This approach, the Company says, is supported by Professor Fernandez[245] in texts referred to by Mr Jaishankar. The Dissenters dispute that and say the referenced passages only relate to European countries and the value in the data derives from the breadth of the survey and its overall conclusions.

774. The Dissenters say that the relevant data points are the overall base cost of equity for U.S. companies and those support Professor Yilmaz's analysis and conclusion of a base cost of equity of 7.56%.

775. The Dissenters also put what they described as an opposing view of Professor Damodaran to Mr Jaishankar in cross examination.[246]

776. Mr Jaishankar maintained that in practice he would use a normalised risk-free rate which was also recommended in the Duff & Phelps /Kroll Valuation Handbook, widely used by valuation practitioners around the world.

777. The Court accepts his views on these matters despite the arguments from the Dissenters, including that he had not done the underlying calculations himself, and relied on his own firm's academics, with in-house expertise.

778. Overall, the Court accepts that Mr Jaishankar's approach to this issue is reasonable and appropriate in the circumstances.

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[244] Supported by McKinsey "Valuation – Measuring and Managing the Value of Companies" (7th Ed)
[245] "Survey: Market Risk Premium and Risk-Free Rate used for 81 countries in 2020 and "Survey: Market Risk Premium and Risk-Free Rate used for 88 countries in 2021'
[246] {Day10/112:18} – {Day10/117:5}

The use of Kroll's ERP by Mr Jaishankar

779. The base cost of equity capital is arrived at by adding the current risk-free rate to the equity risk premium (ERP).

780. The ERP is the premium investors expect to receive when invested in the notional market portfolio as opposed to investing in the notional 'riskless' asset. It is the expected return from the notional market portfolio in excess of the risk-free rate.

781. It may be determined by using a number of indicators based on historical and forward-looking data. Historical data measures average past equity risk premium estimates in the US markets for public stock and in the US bond markets. Forward-looking data is derived from the expectations of stock and bond market analysts.

782. Professor Yilmaz has taken the arithmetical average of the spread between the total returns of the S&P 500 index and those of US 20-year treasury bonds during the period 1926 to 2020 to calculate an ERP of 6.11%.[247] When combined with his risk-free rate of 1.45% this results in a cost of capital for Weibo of 7.56%.

783. Mr Jaishankar bases his ERP of 5.5 % on Kroll's guidance contained in their Valuation Handbook in relation to cost of capital, which is to be used when adopting a normalised risk-free rate of 2.5%, which is the risk free rate he uses.[248] This gives a base cost of capital for Weibo of 8%.

784. The difference between the experts on the appropriate base cost of equity is therefore 0.44% (7.56%, according to Professor Yilmaz, and 8.0%, according to Mr Jaishankar).

785. Mr Jaishankar's view was that Professor Yilmaz's ERP "*was a touch high'* and his base cost of capital was a *touch low*" because of the artificially low risk-free rate of 1.45% he used, which in Mr Jaishankar's view was too low for the purpose of properly valuing a business on the basis of a long term outlook.[249]

786. The Court finds that Mr Jaishankar's figures are reasonable and are to be preferred for the reasons he gives.

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[247] §§314-319 of Professor Yilmaz's First Report
[248] See his explanation in evidence: {Day10/117:18} – {Day10/118:16}
[249] {Day10/119:7} – {Day10/120:16}

Weibo's beta

787. Beta is a measure of the relative riskiness of a specific security, which is assessed by considering the relationship between movements in the share price of the company being valued (or its peers) and movements in the price of an index of diversified stocks. A security will have a beta of more than one if it is riskier than a well-diversified portfolio and less than one if it is less risky. A beta of 1.0 indicates that the security has a similar risk to the market.

788. Professor Yilmaz adopts a beta that is based on 5-year monthly returns.[250]

789. Mr Jaishankar says that combining 2 years weekly and 5-year monthly returns is a reasonable approach. The Court agrees that the beta calculated by Mr Jaishankar through this methodology is to be preferred.

790. Professor Yilmaz for Weibo looked back from the Valuation Date, and for Sina he looked back from the Announcement Date.

791. Mr Jaishankar takes two different 'look back' dates which he identified as the date immediately prior to COVID-19 having been declared a global pandemic of 15 February 2020,[251] and the last trading day prior to the Announcement Date of 2 July 2020 for both Weibo and Sina. He then selects a point estimate beta of 1.65 with no adjustments.

792. The Dissenters say there is no justification for looking back from COVID.

793. The Court accepts Mr Jaishankar's view that having looked at betas before and after COVID he found that post COVID data materially changed the historical observed calculated betas and so by looking at a series of data point points he has attempted to strike a balance looking both at 2 year and 5-year historical betas at both dates, 15 February and 2 July 2020.

794. Although he gave this view from his own practical experience and was criticised by the Dissenters for producing no hard evidence or examples of betas changing on account of COVID, the Court accepts his view and approves his approach.

795. As to why he had treated the look back dates for Sina and Weibo in the same way he said:

[250] {Day18/204:3} – {Day18/204:24}
[251] The World Health Organisation date was in fact 11 March 2020

"*Q: One ought, in principle, to use, insofar as you can, a look-back date which is as close to the Valuation Date as you can, in principle; yes?*

A: I'm not disagreeing with you, save and except for post-announcement, as has been in many 238s. I know we've got an issue here: we've got two stock prices. But generally, once you have the announcement and the stock is trading as at or around the transaction price, any sort of stock market movement information related to the subject company becomes less informative. So usually, the look-back period is not at or around the Valuation Date but the proper look-back period ought to be as at or around the announcement date, generally speaking."[252]

796. His explanation as to why the Valuation Date was not a good point of reference for Weibo was that its beta:

'…could have been affected, because you have a transaction in Sina… and at that stage, as does any other stock, it trades on its own fundamental basis, but also as a function of some potential benefit from the Sina transaction. There's speculation with respect to a privatisation of Weibo and/or the benefits of the Sina transaction flowing to Weibo"[253]

797. The Court has accepted Mr Jaishankar's view that the stock price of Weibo may have been affected by the announcement of the Sina transaction. The Court accepts it is reasonable to stop the 'look back' at the Announcement Date.

Blume adjustment

798. Professor Blume in his seminal work[254] suggested that an adjusted beta could be utilised which reflected the observed tendency of all betas to revert to the mean of the market beta (1.0) over time. According to subsequent research this is regarded as due to statistical rather than economic reasons.[255]

[252] {Day10/138:3-16}
[253] {Day11/27:22} - {Day11/28:4}
[254] Betas and Their Regression Tendencies" (Blume, 1975)
[255] Holthausen's Corporate Valuation, Ch. 8

799. A Blume adjustment is sometimes used by valuers when valuing a company which is relatively new to the market and whose risk profile was expected to decrease with the passage of time and converge towards its industry peer group. Not all valuers apply such an adjustment as Professor Yilmaz accepted. He estimated its use at 50/50.[256]

800. Nevertheless, Professor Yilmaz implies a Blume adjustment for Weibo which reduces the estimated beta of 1.299 and arrives at an adjusted beta of 1.1199.

801. The Court accepts Mr Jaishankar's opinion that a Blume adjustment should not apply in this case. Weibo (and Sina Standalone) are relatively mature businesses. The Court accepts that there is no proper basis for assuming that they might assume less risk profile going forward to converge with peers.

802. The Court agrees with Mr Jaishankar that there is no basis on the evidence for assuming that Weibo was likely to enter into new businesses with less risk then it had already taken on.

The application of a size premium

803. Professor Yilmaz does not include a size premium. He was of the view that a size premium was not warranted in the estimation of Weibo (and Sina's) cost of capital.

804. When questioned as to why he did not take issue with the academic studies cited by Professor Yilmaz in his expert report in this regard, Mr Jaishankar told the Court that he was merely, "*trying to take a balanced approach"* and that while he accepted that some academics took the view that no size premium ought to be used, where there is a debate as to whether a size premium should be applied, he was of the view that "*that debate in the Cayman cases has ended in the favour of the application of the size premium*".[257]

805. He said:

> *"Q. You had that in his first report, and you haven't taken issue with any of that description of the studies in your second report, have you?*
>
> *A. I have not. ... So I'm not disagreeing with academics that they have a view, or at*

[256] {Day18/207/7} – {Day18/207:10}. No Blume type adjustment was applied in either *Re Nord Anglia*, see §§199-204 or *Re Qunar*, see §§323-328.
[257] {Day11/29:9} - {Day11/30:25}. See also {Day10/157:8} - {Day10/157:24}

least some academics have a view, that no size premium ought to be used. I'm just telling you I have looked at the lie of the land in trying to take a balanced approach.

…

Q. No, no I just don't want to digress into a legal debate with you, Mr Jaishankar.

A. No, but the point I was trying to make on Friday, Mr McQuater, was you have cases where no size premium has been found, because there has been no debate in that case. What I'm pointing out to you is, when there has been a debate on whether a size premium ought to apply, that debate in the Cayman cases has ended in the favour of the application of the size premium.

Q. Well, you see my point, Mr Jaishankar, is that you're here as an expert, and you haven't actually expressed a view on this matter.

A. I disagree with that. I think I have expressed my views. I 've expressed my view that I used size premiums. I've expressed my view that I understand there are people who advocate against the use of size premiums. And I've expressed the view that there is debate in the academia. So I have tried to take a middle−of−the−road approach, as I have said previously.

Q. So your approach is: let 's split the difference; I haven't actually got a view? Is that a fair summary?
A. No, again, as I say, I have tried to take a balanced view, Mr McQuater. If I was to take simply my own views, I would be advocating for the full use of a size premium."[258]

806. The Court accepts Mr Jaishankar's view that the maturity and size of a company are relevant to the question of risk and expected growth and so to the consideration and assessment of the cost of equity.

807. The Court accepts his view that there is an inverse relationship between size and risk and so it is logical to take it into account by applying an appropriate size premium.

[258] {Day11/29:9} - {Day11/30:25} and {Day10/157:8-24}

808. Having reviewed the relevant literature, both academic and practitioner,[259] which was not seriously challenged, the relevant Cayman case law,[260] and having taken into account the views of both experts, the Court is of the view that a balanced approach would be to apply a size premium in a reasonable way as Mr Jaishankar has done.

809. The high end of his range is based on the Kroll size premia that are applicable to Weibo, a company in decile 3 with a market capitalisation in the range of approximately $6,619 million to $13,100 million as at the Valuation Date. This leads to the 0.73% that Mr Jaishankar uses and which the Court accepts should be applied.

The application of a Country Risk Premium (CRP)

810. Professor Yilmaz does not apply a CRP to the discount rate. He says that a CRP should not be applied when the beta of a stock already incorporates country risk.[261] He says Weibo and Sina traded in the US and the country risk as is perceived by investors will already be reflected in their betas.

811. Mr Jaishankar's view is that it is reasonable to apply a CRP of an appropriate size in relation to his DCF calculation relevant to Weibo. The risks to the business by reference to where Weibo is situated are, in his view, relevant.[262]

812. Mr Jaishankar's view is that what the CRP is seeking to capture was a specific incremental risk, not of the type that would be reflected in a beta of a company stock quoted on a US securities exchange or by the pure /basic CAPM.[263]

813. The Court was referred to a number of academic papers. Professor Damodaran recognises that CRPs should be used because whilst globally diversified investors play a role in the pricing of

[259] See Professor Yilmaz's First Report §§323-327 and "Size matters, if you control your junk" (2018) at pp. 1, 5, 29 and 30; and "The Size Effect Continues To Be Relevant When Estimating the Cost of Capital" (2018) at pp. 2, 5, 13, 16, 29, 33 and. Two Articles Addressing Firm Quality and Its Impact on the Size Effect" (2019 Grabowski)
[260] CICA in *Re Trina* at §§[213] [215]-[216] and [223]- [224] the decision in *Re Trina*, per Segal J at §[300] (as affirmed by the CICA); *Re Qunar*, per Parker J at §[342] ;in *Re Shanda* both experts advocated for the use of a size premium. Segal J preferred the company's expert evidence advancing a size premium of 1.71%. The dissenters' expert had advocated for a lower size premium of 1.07% (see §§167-175). However, in *Nord Anglia* the Court did not add a size premium.
[261] §202 of Professor Yilmaz's Supplemental Report
[262] {Day10/72:20} – {Day10/73:17}
[263] {Day10/73:21} – {Day10/81:10} and {Day10/88:15} – {Day10/92:19}

equities around the world, the resulting increase in correlation across markets results in a portion of a country risk being non-diversifiable.[264]

814. Professor Damodaran cogently explained the rationale for a CRP as follows:[265]

> *"As companies and investors globalize, we are increasingly faced with estimation questions about the risk associated with this globalization. When investors invest in China Mobile, Infosys or Vale, they may be rewarded with higher returns, but they are also exposed to additional risk. When Siemens and Apple push for growth in Asia and Latin America, they clearly are exposed to the political and economic turmoil that often characterize these markets. In practical terms, how, if at all, should we adjust for this additional risk? We will begin the paper with an overview of overall country risk, its sources and measures. We will continue with a discussion of sovereign default risk and examine sovereign ratings and credit default swaps (CDS) as measures of that risk. We will extend that discussion to look at country risk from the perspective of equity investors, by looking at equity risk premiums for different countries and consequences for valuation. In the fourth section, we argue that a company's exposure to country risk should not be determined by where it is incorporated and traded. By that measure, neither Coca Cola nor Nestle are exposed to country risk. Exposure to country risk should come from a company's operations, making country risk a critical component of the valuation of almost every large multinational corporation'……*
>
> *Are you exposed to more risk when you invest in some countries than others? The answer is obviously affirmative…*
>
> *…*
>
> *Heeding the advice of experts, investors in many developed markets have expanded their portfolios to include non-domestic companies. They have been aided in the process by an explosion of investment options ranging from listings of foreign companies on their markets (ADRs in the US markets, GDRs in European markets) to mutual funds that specialize in emerging or foreign markets (both active and passive) and exchange-traded funds (ETFs). While this diversification has provided some protection against some risks, it has also exposed investors to political and economic*

[264] Investment Valuation, Tools and Techniques for Determining the Value of Any Asset
[265] "Country Risk: Determinants, Measures and Implications – The 2019 Edition":

risks that they are unfamiliar with, including nationalization and government overthrows.

….

If we accept the common sense proposition that your exposure to risk can vary across countries, the next step is looking at the sources of this variation. Some of the variation can be attributed to where a country is in the economic growth life cycle, with countries in early growth being more exposed to risk than mature countries. Some of it can be explained by differences in political risk, a category that includes everything from whether the country is a democracy or dictatorship to how smoothly political power is transferred in the country. Some variation can be traced to the legal system in a country, in terms of both structure (the protection of property rights) and efficiency (the speed with which legal disputes are resolved).

…

While a country's risk exposure is a function of where it is in the growth cycle, that risk exposure can be affected by the political system in place in that country, with some systems clearly augmenting risk far more than others.

…

If you invest in a business and it does well, the payoff comes in the form of higher profits (if you are a business) or higher value (if you are an investor). If your profits can be expropriated by the business (with arbitrary and specific taxes imposed just upon you) or your business can be nationalized (with you receiving well below the fair value as compensation), you will be less likely to invest and more likely to perceive risk in the investment. Some businesses seem to be more exposed to nationalization risk than others, with natural resource companies at the top of the target list.

…

Investors and businesses are dependent upon legal systems that respect their property rights and enforce those rights in a timely manner. To the extent that a legal system fails on one or both counts, the consequences are negative not only for those who are immediately affected by the failing but for potential investors who have to build in this behavior into their expectations.

….

It is worth emphasizing, though, that legal risk is a function not only of whether it pays heed to property and contract rights, but also how efficiently the system operates. If enforcing a contract or property rights takes years or even decades, it is essentially the

equivalent of a system that does not protect these rights in the first place, since neither investors nor businesses can wait in legal limbo for that long."

815. Mr Jaishankar applies a CRP by reference to a blend of three models as set out in the *Kroll Cost of Capital Navigator.* He took the three models in aggregate and the data that was available and adopted an average value.[266]

816. However, he did not apparently provide Kroll's CRPs for other countries to Professor Yilmaz so that he could identify whether the results were reasonable and internally consistent.

817. Mr Jaishankar did not challenge the characterisation of Professor Damodaran's method for calculating CRP as "*transparent… reliable and robust*" and acknowledged that it was "*a potential data point that needs to be considered*".[267]

818. The Court is of the view that Professor Damodaran's model ought to be adopted, which did not attract the criticisms of the other models considered[268] and which Professor Yilmaz described as 'best in class'.

819. Mr Jaishankar agreed that the most contemporaneous figure from Professor Damodaran for the Valuation Date, for China, was 0.68%.[269]

820. This is the figure which the Court is of the view should be used, not Mr Jaishankar's figure.

Adjustments consequential on 2020 actual performance

821. The Court accepts Professor Yilmaz's view that limited adjustments are to be made to the Privatisation Projections for Weibo to reflect its better than forecast performance in 2020, so bringing the projections which were prepared in August 2020 up to date to the Valuation Date.

822. That should logically inform the forecasts for 2021 to 2025 and the Court accepts his view that there should be a modest increase in forecast revenue and EBITDA for those years.

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[266] Mr Jaishankar had considered the data produced by Professor Damodaran as regards the value of a CRP and the CRP applied by Morgan Stanley Asia in their fairness opinion in his consideration of the estimation of the applicable CRP and rejected both as being outliers: {Day10/102:6-16}.
[267] {Day10/104:1-8}
[268] Erb-Harvey-Viskanta and Relative Volatility models
[269] {Day10/103:17-25}
251121 In the matter of Sina Corporation – FSD 128 of 2021 (RPJ) Judgment

823. The Company's response to Mr Jaishankar's first Information Request (response 8) does not answer whether Weibo's outperformance in 2020 affected the estimate as at the Valuation Date of its future performance.

824. The Court accepts that the adjustments should be made as Professor Yilmaz has suggested.

Treatment of inter-company loans

825. There is a dispute as to how Sina's borrowing from Weibo should be treated. Professor Yilmaz treats it as working capital i.e., as a current working asset for Weibo, and a current working liability for Sina Standalone.

826. As of 2019, Weibo had extended $385 million in short-term financing to Sina. Sina had itself recorded this as 'working capital' in its Privatisation Projections, meaning it should not be treated as an ordinary repayable debt.[270]

827. Sina's borrowing from Weibo increased in 2020, from US$385 million (which is the figure in the Privatisation Projections) to US$549 million. Mr Jaishankar agreed that, however the borrowing is treated, the figure should be updated to reflect the actual value of the borrowing as at the end of 2020.[271]

828. Mr Jaishankar treats it as ordinary debt, that is to say a loan receivable for Weibo and a loan payable for Sina Standalone.

829. However, the Company has not provided any loan documentation or related documentation for the purpose of better understanding the Weibo funding to Sina.[272]

830. The Court is of the view that Professor Yilmaz's approach should be preferred. It is consistent with the treatment of this item by the Company itself and by Morgan Stanley.

831. Professor Yilmaz's analysis is also consistent with what Bonnie Zhang said in the Management Meeting:

[270] Professor Yilmaz's Supplemental Report §300 and 304
[271] {Day 10/40:14-22}
[272] Although it was recorded as a loan in Weibo's audited accounts and in its SEC filings

"PROFESSOR YILMAZ: Sid, if I may just interject for a moment. Now that we've been talking about this cash and loans, could you actually provide colour about the loan from Weibo to Sina?

BONNIE ZHANG: Mm-hm. The colour?

PROFESSOR YILMAZ: I mean, could you provide information about the loan from Weibo to Sina, and going forward what kind of practice this involves?

BONNIE ZHANG: Going forward? Okay. Yeah. This has been existing for a long period of time. There's -- it goes back to fintech business. When we initially would like to start the fintech business, Sina, the non-Weibo part, had quite limited cash. And fintech business requires a considerable capital injection at the very initial stage. So we have -- we have to borrow funds from Weibo get that this thing initially started. So that constitute the chunk of the -- the chunk of the intercompany loans between Sina and Weibo. That's how it was created. ***And like I said, Sina has limited ability to raising funds by itself. That's why even from an operation perspective, there's from time to time we need additional funds just to support, you know -- to pay off the suppliers, to pay off the employees, all these. So there's, you know, there's borrowings from the Weibo side****. And because Sina has the cash flow, it's not as robust as Weibo, working -- cash flow from operating -- from operating perspective. The ability to pay off -- to pay off the intercompany loan, the ability, it's limited. That's why, you know, through all these years, it has been accumulating a balance. And as of now, even these days, if you look at Weibo's financial, it's still there." (emphasis added)*

832. From this response it seems as if there was no realistic expectation of repayment within the term of the borrowing because the Company had limited capacity to pay off the loan.

833. The Company seems to have regarded this as a fund to draw on and to pay suppliers and employees. Bonnie Zhang also confirmed that not only was the inter-company loan being treated as working capital in the projections, it was in fact being used as such by Sina to run day to day operations. Sina continued to benefit from Weibo's revenues.

834. The Court accepts Professor Yilmaz's view that the Weibo loan covered operating costs which were incurred to a significant extent to support its own operations, which suggests that Weibo

should treat the debt as a current working asset and for Sina (the borrower) to treat it as a current working liability.

Sina Standalone

835. As part of both Valuation experts' SOTP valuation, each expert was required to value Sina standalone, comprising Sina's Portal business segment and Sina's Fintech business segment.

836. Mr Jaishankar valued both of the Portal and Fintech segments together, accounting for their cash balances together even though they were different businesses.

837. He used a DCF methodology (as he did to value Weibo) using the Company's Privatisation Projections which gave rise to a business enterprise value of (negative) US$530 million and an *en bloc* equity value for Portal and Fintech as (negative) US$1,181 million (excluding LTIs). This value he says recognised the overall loss-making nature of Sina's standalone business.

838. Professor Yilmaz approached a "stand alone" valuation of Sina's Portal business and its Fintech business based upon a company / revenue multiples methodology (with a DCF cross check).

839. Having rejected the Company's Privatisation Projections, Professor Yilmaz placed no reliance on a DCF methodology for Portal and Fintech.[273]

Privatisation Projections

840. The Court has approached the reliability of the projections with heightened scrutiny for two reasons. First because they were heavily criticised by Professor Yilmaz and there was no Company fact witness to explain the 'nuts and bolts' that went into the process. Second because the fact that the projections were prepared by company insiders does not lead to the conclusion that they are reliable.

841. The Court formed its own view on the reliability of the projections based on the evidence.

842. The Court has also borne in mind that it is the Company's burden to prove that the projections are reliable.

[273] His DCF calculations produced a value for Sina that was lower by some US$203 million (US$528 million – US$325 million) than the value estimated through his comparables / multiples analysis

843. The Court is satisfied having considered all of the evidence, particularly of Bonnie Zhang and both experts and the material which they each referred to, that the Privatisation Projections were prepared in good faith by a competent management team which understood the business and was capable of making informed judgements about future performance. They were accurate and may, in the Court's judgment, be relied upon.

844. Having reviewed the evidence carefully, the Court is prepared to defer to the knowledge and expertise of the Company's management team and the accuracy of their output. The Court is not persuaded by Professor Yilmaz's criticisms to the effect that they cannot be relied upon at all, or that the numbers in the forecasts were flawed or wrong.

845. Notwithstanding Professor Yilmaz's trenchant criticisms, the Court has found that the Privatisation Projections were not the product of arbitrary decisions made on an ill-disciplined basis, as alleged by the Dissenters.

Discrepancies

846. Bonnie Zhang was taken to a spreadsheet where revenue figures were not the same as those put forward in the Privatisation Projections and it was suggested to her that the capital expenditure forecast was calculated by reference to stale revenue figures copied across to the spreadsheet and then not updated.[274]

847. She accepted that this was an error and said by way of an explanation:[275]

> *"Q. ... Now, in the spreadsheet, the capital expenditure has been calculated as a percentage of a revenue figure. But then when you come to the privatisation projections, the same capex figures have been used. We saw right at the top on the left-hand side, line 4, they've used the same capex projections, same capex figures. They've been the same ones pasted in, taken in there. But the capex figures should have been updated to correspond to the updated revenue figures. But that hasn't been done. Can you see that?*

[274] Professor Yilmaz's Supplemental Report § 293
[275] {Day4/34:7} {Day4/35:2}

A. I look at this. It's a materiality issue. If you look at the revenue figure, how far away they are, they are 5/6% difference on the revenue figure. You times whatever the percentage. It's anywhere between 1.2% of revenue to 1.5% of revenue. That gives you a difference less than $1 million. It's probably in the hundred thousand dollars' difference. And the capex has not been a significant item for the company's forecast. You look at a company with over $2 billion revenue, capex each year, it's somewhere about 45 million.

Q. The reason I have gone here is not because this item particularly makes a huge difference. It's to show the sloppy preparation involved in these projections.

A. I'm sorry, I'm interrupting, but I don't –

Q. You are interrupting.

A. -- take the words of "sloppy". You know, there is judgment to be considered in preparation of financial -- forecasts. There's a materiality consideration has to be applied. You have to consider cost of a benefit for doing a project like this. You know, if we're looking at numbers that with a difference less than half a million, why we have to spend hours to update the grand details, to bother the operation people, say: hey, please help me to forecast something in three or five years down the road, how much you're going to spend on the software part?"

848. The Court accepts Bonnie Zhang's evidence that this error is not indicative of a generally sloppy or careless approach by the Company.

Excel spreadsheets

849. Attention was focused by the Dissenters on how the formulas within the cells of an excel spreadsheet were prepared.[276] They argued that that the model was not well developed and disciplined, built from the bottom up, with clear and comprehensible logic leading from underlying data inputs to the output variables, such as revenue.

[276] By using hard coded numbers

850. These points were taken at trial. In the Court's view the accuracy and reliability of the end product (or trends in revenue or expenses) and the methodology could have been the subject of closer questioning at the Management Meeting by Professor Yilmaz.

851. At trial Professor Yilmaz also referred the Court to standard valuation textbooks[277] which set out certain characteristics of well-built spreadsheet models and suggested that unless specified as data inputs, hardcoded numbers should be avoided.

852. The Court was not persuaded that the criticisms of the structure of the spreadsheets or the method by which one gets to the end results sufficiently called into the question whether the team (led at the Company by Ms Ma) were providing accurate forecasts.

853. Mr Jaishankar said:

> "*The first year, the 2020, was prepared on a detailed bottom-up approach, and then the company extended that, using these year over year growth rates, and then what I said to you was they then checked in terms of disaggregating that data as to what it means with respect to the various components and subcomponents. And that's what they're demonstrating here for purposes of their own analysis and sense check. So, again, I come back to what I said before. The fact that the modelling isn't live, dynamic -- and I'm not disagreeing with you that it's not what you would expect to be in terms of the correct direction of travel if you were truly doing a bottom-up approach, which is you would start with the number of customers, ARPU, and so on, and then build up. But, again, I have said what I have said, and I'm repeating myself. I don't think this sort of Excel modelling impugns the forecast*"[278]
>
> …..
>
> *"A. In an ideal world. I have seen lots of Excel models, Mr McQuater, where certain cells get hard-coded for very specific reasons, as long as they're annotated so that reader can look at it."*[279]

854. The Court accepts Mr Jaishankar's pragmatic view in this regard.

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[277] Koller Goedhart and Wessels (2010)
[278] {Day11/92:15} – {Day11/93:7}
[279] {Day11/62:12} - {Day11/62:15}

855. The relevant people within the business segments of the Company had intimate inside knowledge as to how the Company had performed historically and was performing in 2020, and the Court has formed the view that their judgement as to the forecast decline in profit margins going forward can be relied upon.

856. Whilst hard coded numbers were used within the forecasts, there is no reason to doubt that they were based on the individual judgements of the Company's management who had access to inside knowledge of the Company's business operations.

857. The Dissenters particularly criticised, in detail, the Portal revenue, gross profit and operating expenses forecasts.

858. Mr Jaishankar accepted that the Portal revenue forecast was "*not a well structured dynamic Excel modelling per the Koller book"*.[280] However, he said that this did not '*impugn the forecast'* because, he said, the Company have "*sightlines on what the implications were to the various line items and by year".*[281]

859. The Court accepts his evidence that figures for the number of customers and ARPU were shown:

> *"In my view, the Company did consider/reflect these key drivers in the forecast. It is clear to me on reviewing the "portal + DFZ" tab that the Company did consider the number of customers and the average revenue per user ("ARPU") and that the use of the "hardcoded" coefficients on the "5Y" tab simply corresponds to assumed negative annual growth rates in the range of approximately -5% to -6% over these years—as reflected in cells Q7 to T7 on the "portal + DFZ" tab".*[282]

Reliability

860. The Dissenters say that the projections reveal an answer as to a forecast, for example relating to revenue or profit, but without a clear trail of inputs so that the answer can be scrutinised and understood.

[280] {Day11/85:6-8}
[281] {Day11/85:13-14}
[282] Mr Jaishankar's Supplemental Report §15.57 and {Day11/82:25} – {Day11/83:18}

861. Professor Yilmaz's criticisms of the projections was tested in cross examination: [283]

> *"Q… But I'm suggesting to you that you are overplaying -- I'll use that phrase, I know it's tendentious -- the difficulties in relation to these projections, and not giving credit to the company who have been operating this business for a considerable amount of time, and have a deep understanding of the company's business; correct?*
>
> *A. That's the problem, exactly. I mean, how do you actually demonstrate that deep understanding? You make certain assumptions without justifications, and then once you make big assumptions, you reverse engineer and plug in the downstream numbers. I mean, this is -- just lacks discipline. It just invites errors, and it just -- you can't rely on it. That's basically what I'm saying. So it's my professional judgment. I understand you don't agree with me. I guess we'll agree to disagree on that one.*
>
> *Q. I'm just going to take it a bit further, because you say that it's a problem. The fact that the people who are compiling these numbers know the business inside out, that can't be a problem, can it?*
>
> *A. No, it's not inside out. I was being maybe not clear. They know*
> *enough to make an assumption on the bottom line, but they don't know enough to make assumption about the specific division. It's just going to be the spread between the other division and the total. That kind of stuff doesn't make much sense. I mean, you don't – human brain doesn't work that way.*
>
> *Q. I'm sorry?*
>
> *A. I mean, you don't model things that way. Humans don't model things that way.*
>
> *Q. Well, humans do model things that way, because that's what happened in this case. And it's a consequence, I'm suggesting, that the people who are compiling these figures know the businesses of SINA and Weibo intimately. And you're simply not accepting that, because you're applying a standard of perfection to the modelling that you say is required and isn't borne out by these objections; correct?*

[283] {Day18/30:1} – {Day18/34:3}

A. Mr Atherton, these people who made these projections were not doing three, five-year projections. This is the first time they are doing it this year. So they need to have some discipline. Knowing the business doesn't mean you have a crystal ball that: I'm just going to know the bottom line number five years out; I just make a number up, and it's not terribly good how that number came up. And then the other division are not even going to bother, because I just made an assumption over the entire company. I'm just going to take the spread. I mean, that -- that lacks serious discipline and that's not how people forecast things. That's not a science.

Q. These projections were produced -- the baseline was produced from a bottom-up -- on a bottom-up basis. I think you agree with that?

A. I'm not sure what we agree with. I mean, this is fairly bad for everything.

Q. And the projections were then reviewed by Mrs Zhang, who also has a huge amount of experience with the company. And she essentially -- she gave evidence and this is stated in her witness statement -- applied a sense check, based on her understanding and experience within the business.

A. And –

Q. And that should be given weight, shouldn't it?

A. I gave it weight enough to do the DCF. I did calculate it, in case my Lord, or you, or someone else wants to put a weight on it. I did the math. I personally think it's poor quality. If my Lord wants to give weight on it, I have done my work so that he can. But I personally think what I think. The cash flow estimates that I look at for three years that they did for Moody's and this, I cannot inspect. I don't understand what changed, because I don't see the model.

Q. The company and the people who compiled these projections may not have, as you put it, a crystal ball. But I think you would agree that you don't have a crystal ball either; correct?

A. No, I don't have a crystal ball at all, and I'm not running this business either. I'm happy to defer to them. I just want to understand their logic and that I want to get comfortable that they worked with a good discipline and they used a systematic approach so that they don't make errors. I am not running this business. I am not here to run this business either.

Q. Precisely. But they may not have a crystal ball, but they have that grounding in the business that you don't have; correct?

A. Yes, I'm relying on them, but they had to demonstrate a discipline that they have taken this task seriously and did their job properly.

Q. And, as I put to you the other day, insofar as you were unsure, for example on the management meeting call, the person who actually compiled the projections was there, and you could have asked any question you wished in order to try and reconcile your concerns or salve your concerns in relation to individual aspects of the projections; correct?

A. I explained to you that at the time of the management meeting, I wasn't at the bottom of this…."

862. The Court agrees with the Company that Professor Yilmaz's criticisms of the projections were somewhat overplayed.

863. Professor Yilmaz suggested that the Company's ability to forecast with any accuracy was poor.

864. He gave as an example the differences between the projected operating losses:

"…the 42% and 35% percentage variances in 2020 and 2021 are high" and *"the company has no track record of doing well beyond the budget year. Even the budget year, as we see for 2018 and are now in 2020, they haven't done well even in the middle of the year before year-end numbers"*.[284]

[284] {Day18/233:25} and {Day18/234:6} – {Day18/234:10}

865. However, as Mr Jaishankar pointed out,[285] from 2018 through to 2020, the actual revenues were lower than the projected / forecasted revenues so the Company may have been overly optimistic in projecting revenues in these years.

866. The Company's forecasts and the strategy in the 2020/2021 years where significant costs were reduced came up at the Management Meeting:

> *"BONNIE ZHANG:…From -- from a company perspective, we do see a bit of a cost-saving that lead to our cost control. That's including the -- we cancelled all offline marketing events. We used to have on a quarterly basis, have offline marketing activities targeting certain user group or new user group. Those offline events were cancelled. And because of the descending revenue trend, we end up freeze our head-count in 2020. So that has a bit of a cost-saving. And also, we have reduced some of our channel spending. Well, we say "channel spending," meaning that's the -- we spend in smartphone makers, handset makers. We spend on large APPs, who are those ones that direct traffic to Weibo. Just try to balance the revenue to offset the descending trend in revenue, we have do have taken certain cost-control measures. So that, I would say, a little bit more detail for the COVID impact on the company specific.*
>
> *SID JAISHANKAR: So on the revenue side, there were some offsetting upsides as some people went from offline to online --*
>
> *BONNIE ZHANG: Yes.*
>
> *SID JAISHANKAR: -- even given the negative trend line.*
>
> *BONNIE ZHANG: Right.*
>
> *SID JAISHANKAR: But also on the expenses side, you are saying there were some saved costs, and you took reasonable steps in terms of discretionary spending to try and control costs, given the lower revenues.*

[285] §15.65 of Mr Jaishankar's Supplemental Report

BONNIE ZHANG: Correct. I think this is a natural response from a business perspective, that, for event like that, you somewhat would be -- become a lot more conservative."

867. Although Professor Yilmaz did ask questions about the projections in his Information Requests, he did not ask for any further explanation on the 42% and 35% variances in operating losses at the Management Meeting.

868. In the Court's view, rather than rejecting the Privatisation Projections out of hand, Professor Yilmaz and his team could have taken his inquiries further with the Company's management at the Management Meeting at which the Company fielded some employees prepared and able to deal with the detail (although apparently Ms Ma was not physically present).

869. In that way perhaps some of his concerns might have been explained better to him and the Company would have had an opportunity to deal with the remaining criticisms by fielding the right person who prepared the particular numbers and could explain the method at a granular level. To leave it to be investigated at trial was, in the Court's view, unsatisfactory.

870. Since Professor Yilmaz rejected the Company's Privatisation Projections as an unreliable basis for a DCF valuation (which methodology he accepted was the "Gold Standard"), he preferred to use a multiples approach which he accepted was a crude methodology. [286]

871. Whilst the Court acknowledges Professor Yilmaz had no confidence whatsoever in the process by which the forecasts were produced and rejected the Privatisation Projections wholesale, the Court has concluded that this is not justified.

872. The Company has satisfied the Court that the Privatisation Projections were reasonably prepared, based on detailed information known to the heads of the relevant business segments within Company's management and based on good faith estimates and judgments of the future financial performance of the Company and may be relied upon.

[286] {Day15/28:6} – {Day15/30:2}

Professor Yilmaz's multiples approach

873. As to the comparables/multiples valuation methodology Professor Yilmaz used in Sina Standalone, it is not reasonable for the Court to place reliance on it because he accepted on a number of occasions that it was crude:

> *"A. Again, in DCF you have full control over these things; you can separate them as long as it allows you. In multiples method, I don't have that full control, because I don't have comparables for both of those segments.*
>
> *Q. Which is a further indication as to why this methodology falls short of what would be ideal; correct?*
>
> *A. I would agree that it is not ideal. It's a back−up and it's a crude methodology*[287]

874. He accepted that it was rare for him to rely on a multiples method:

> *"A. It is very rare for me to rely on multiples method for a stable firm that has publicly traded for decades and has good data. So I would actually prefer DCF over multiples, as long as the firm has been publicly traded for a long time, has reliable data and reliable inputs. So in that sense, Sina standalone is an exception"*.[288]

875. As the Court has found, this was not an approach which has assisted it or which it accepts is appropriate in the circumstances.

876. The multiples approach relies upon finding a true comparator company and then by making adjustments and applying controls to account for differences. It can be an inexact and subjective methodology.

877. In Chapter 20 of his 2012 textbook Professor Damodaran writes:[289]

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[287] {Day15/44:11} - {Day15/44:19} See also {Day15/29:1} - {Day15/30:2}, {Day15/34:9} - {Day15/34:13}, {Day15/52:6} - {Day15/52:7}
[288] {Day14/79:5} - {Day14/79:11}
[289] Damodaran, Aswath, 2012 Investment Valuation: Tools and Techniques for Determining the Value of Any Asset, Chapter 20

"*While earnings and book value multiples are intuitively appealing and widely used, analysts in recent years have increasingly turned to alternative multiples to value companies. For young firms that have negative earnings, multiples of revenues have replaced multiples of earnings. … Revenue multiples have proved attractive to analysts for a number of reasons. First, unlike earnings and book value ratios, which can become negative for many firms and thus not meaningful, revenue multiples are available even for the most troubled firms and for very young firms. Thus, the potential for bias created by eliminating firms in the sample is far lower. Second, unlike earnings and book value, which are heavily influenced by accounting decisions on depreciation, inventory, research and development (R&D), acquisition accounting, and extraordinary charges, revenue is relatively difficult to manipulate. Third, revenue multiples are not as volatile as earnings multiples, and hence are less likely to be affected by year-to-year swings in a firm's fortunes. For instance, the price-earnings ratio of a cyclical firm changes much more than its price-sales ratios, because earnings are much more sensitive to economic changes than revenues are.*

The biggest disadvantage of focusing on revenues is that it can lull you into assigning high values to firms that are generating high revenue growth while losing significant amounts of money. Ultimately, a firm has to generate earnings and cash flows for it to have value. *While it is tempting to use revenue multiples to value firms with negative earnings and book value, the failure to control for differences across firms in costs and profit margins can lead to misleading valuations."(emphasis added)*

878. It was also put to Professor Yilmaz that finding comparable companies was a challenge in relation to multiples:[290]

"Q. But in relation to multiples, you are starting off, in a sense, at a disadvantage, aren't you, because you have to identify as closely as possible comparable companies. Do you agree?

A. Not really. It depends what you're comparing to. If I may, let's compare to the market prices. You would think market prices are objective. That was your assertion maybe in our previous sessions. Let's take it at face value. But now let's look at it in an appraisal

[290] {Day14/63:9} – {Day14/64:9}

case. The stock is an outstanding offer, and let's say 1 January, the stock stop trading freely, because there's a tender offer outstanding, and you close the deal in July 1. In those six months now, you're going to take the unaffected price from January 1 and bring it forward with some kind of an adjusted market trading price analysis. That analysis itself will ask you to actually find comparable firms and see how they change in that interval. So what I'm trying to say is that in every method, inadvertently you make these choices. If the question was asked, what's the fair value of January 1, and if you find that stock to be efficient, then you don't need to do any subjective choices. But when you carry it forward, similar choices will need to make. So we have to compare apples to apples and oranges to oranges."

879. Professor Yilmaz was asked about the net result of his valuation:[291]

"JUSTICE PARKER: If I have understood his evidence, his expert reports, he says what you haven't done is taken into account that this was a loss-making business and riddled with debt, and you've come up with a 500 million or so valuation. And that -- that just doesn't make sense.

A. That's a fair point, my Lord, and I respect that. But the challenge that we have is that I -- I had serious doubts whether those forecasts were reliable, and that's exactly why I'm doing this exercise. And because I'm disputing their cash flow projections, I don't want to make judgment calls of which comparable companies I use. I said this is the one you cited, I'm just going to take the whole set and run it. You know, in all fairness, I mean, (inaudible) I'm overeducated in many ways. My competitive advantage is actually not doing this analysis in a simple way. Actually doing the full blown DCF, then I can actually use my time using econometrics techniques to make sure that I've done the right beta calc, all of that stuff. ***So I actually would say that this methodology that I'm using is very crude, because the input quality isn't as good. So what I have done really is a benchmark to have some idea. But if you honestly ask me and say, professor Yilmaz, I listen to you, you say it's $500 million, I think it's half, or double, or in fact it's even zero, would it be reasonable? I wouldn't be able to tell you that it would be unreasonable, because the confidence on it is weak because it's a very crude methodology. And the reason I was forced in to do it is***

[291] {Day15/28:6} – {Day15/30:2}

> ***because I wasn't willing to accept the cash flows as the test, and that's why I do this***. *I think Mr Atherton is 100% right. I think he has access to some of my earlier work, which is public, and I also teach around the globe. So people know what I think. Normally, make sure companies of this sort gives you so much financial data, you should actually use a full-blown DCF. I think that's my belief. So for that reason, I did this math, but my confidence on it isn't very strong. And I didn't want my personal judgments to interfere with it. That's why I just want to step up and say this is the calculation. Do I think this is the God's truth and I think it's exactly this? No, it's very crude methodology. It's just an alternative to give me some idea. That's the exercise."(emphasis added)*

880. The Court has decided not to place reliance on the multiples methodology for Sina Standalone, having regard to Professor Yilmaz's evidence, and having accepted the Company's case that the Company Privatisation Projections are reliable.[292]

Company comparables/market traded price

881. The Company points out that Professor Yilmaz relied on a comparable companies analysis in his SOTP approach with respect to the value of Sina Standalone and its investment in TuSimple, but with respect to Sina's publicly traded LTIs,[293] he relies on each company's market traded price as at the Valuation Date, without any further enquiry or analysis as to whether or not they were probative of the fair value of such shares.

882. Professor Yilmaz described a 'washing out process' inherent in the multiples method with regard to market cap:[294]

> *"Q. No, okay. So that's what I mean. You're basically assuming that the -- when you're taking the market cap analysis, that the shares of these companies are operating in an efficient market?*
>
> *A. Not necessarily.*

[292] US$528 million on the basis of a 1.0 revenue multiple.
[293] Show World, Daily Interactive, Tiange and Leju
[294] {Day15/55:17} - {Day15/56:14}

Q. But that's what you just said. You basically take it as a given.

A. No. We -- on average, some of them might be overvalued. Some of them might be undervalued. I'm not here to say we are going to assume each one of them are efficient. On average it washes out. That's the implicit assumption.

Q. But that's -- I'm sorry, you have made an assumption; correct?

A. No, this method makes that assumption. If you're going to use multiples method, a comparable firm analysis, that's the standard thing, that on average those things washes out, because that's the whole idea of using multiple companies, that (inaudible) numbers. That kind of left and right stuff cancels out each other. It comes with the territory. It's one of the reasons why I don't like multiples method, but it comes with the territory."

883. He also referenced a 'cancelling out process' with regard to comparable companies:[295]

"A. ...So when I'm taking eight firms or nine firms, let's say eight firms, some of them will be efficient, some of them will be inefficient. And the ones that are inefficient are incorrectly priced, either with a positive shock or a negative shock. When you average them across, they supposedly cancel out each other. So that's the whole idea of this, using multiples and taking the average. So I am not assuming each single one of them must be efficient and exactly right. It's just that on average it cancels out. That's the basic premise of statistics.

Q. That's the basic assumption that's used in the methodology; correct?

A. That comes with the territory. That's correct.

Q. And that's the assumption that you apply?

A. The assumption isn't that they are all efficient. The assumption is that it's white noise, it cancels out."

[295] {Day15/57:6} - {Day15/57:22}

884. The Company argues that his conclusion and his approach to the analysis is invalid. To say that the market trading prices may or may not be efficient and if they are inefficient they could be overvalued or undervalued is not appropriate.

885. In addition the Company says that to assert that such issues 'wash out' illustrates an overall unreliability in the comparable companies analysis.

886. The Company argues that valuation experts should include each data point from their comparable companies analysis on the assumption that the market trading prices of the relevant companies are efficient and probative of their fair value, so that the selection of a range of valuation multiples from the data set should be equally probative of the fair value of the subject company's shares.

887. Professor Yilmaz had himself pointed out the limitations of this methodology.

888. The Court agrees with the Company that it is not a methodology that can be reasonably relied on in this context.

889. Professor Yilmaz also relied on (and then abandoned) the projections for his DCF analysis, which resulted in a much lower valuation (by some US$203 million) than that arrived at using a multiples approach.

890. However, it still resulted in a positive value of Sina standalone of US$328 million as to which he said this:

> *"Q. Now, of course, you attempt to do, or purport to do, a DCF valuation of SINA standalone; correct?*
>
> *A. That's correct.*
>
> *Q. But you don't rely on it at all, do you?*
>
> *A. That is correct. I rely on it as a benchmark for a sanity check.*

Q. Well, I think you do that in relation to Weibo, but I'm not sure you do that in relation to SINA standalone, because you say your DCF calculation is unreliable, for a variety of reasons?

A. That is correct."[296]

891. The Court accordingly also places no reliance upon the DCF calculation he used for Sina standalone.

Mr Jaishankar's DCF

892. The experts agree that Sina's standalone business was loss making.

893. The Court accepts that the operating reality of the Company at the time was reflected in its projections of negative cash flows and the DCF method used by Mr Jaishankar is reliable and should be followed.[297]

894. Mr Jaishankar's DCF methodology is based on the unadjusted Privatisation Projections as they relate to Sina's standalone business for 2020 to 2025 including projected revenues for Fintech and Portal combined (as well as other financial and operational items*).*[298]

895. Mr Jaishankar applies a terminal growth rate of 3.25% beyond 2025 across both the Portal and the Fintech businesses.

896. He also applies an average WACC of 10.86% to the forecasted free cash flows and terminal value.

Portal

897. On the assumption that losses incurred by Portal would continue for strategic reasons relating to Weibo, Professor Yilmaz looked at how those losses might be dealt with. He assumed that

[296] {Day18/2:11} – {Day18/2:21}
[297] Mr Jaishankar's First Report at §§15.80-15.107
[298] A summary of the financial projections is set out at Table 33 of Mr Jaishankar's First Report and show projected losses from Sina's standalone operations from US$77 million in 2020 to US$36 million in 2025.

the 'free ride' to Weibo's shareholders would be curtailed over time as Weibo internalised at least a portion of Portal's costs.

898. He applied a negative terminal growth rate shrinking its losses at the same rate as its revenues declined.

899. The Court does not accept Professor Yilmaz's view that an average terminal growth rate of (negative) 3.99% should be applied to the Portal business.

900. The assumption that, because the Portal business will continue to generate negative cash flows, it was more likely that the Company would eventually be forced to reduce the impact of these either by winding it down or by having Weibo internalise more of the cash flows, is in the Court's view questionable.[299]

901. The Court accepts the Company's argument that the process of wind down would not be straightforward as the Company was not the sole owner of Weibo and other shareholders could well disagree.

902. Also, Professor Yilmaz was asked about an adjustment or modification to Weibo's market trading price to reflect the internalisation of Portal's costs on the basis that his primary valuation of Weibo was based on a market capitalization analysis.

903. His evidence was as follows:

> *"Q. So on that basis, by taking that market price, you can't be modifying or adjusting that market price by reference to or on the basis of the internalisation of Portal's costs into Weibo, can you; correct?*
>
> *A. It's not clear. In your question there's an implicit assumption that the market was actually expecting SINA to run cost infinitely long time. That's not a reasonable expectation for a market to have. So there's no evidence to suggest that market did not incorporate the correct beliefs as to that Weibo at some point has to support SINA. So I'm not sure I agree with you on that one.*

[299] §473 of Professor Yilmaz's Expert Report

Q. Well, there's nothing to suggest that the market at all was pricing in the possibility or the actuality of the internalisation by Weibo of Portal to cost, is there?

A. There is none either way. I actually dispute the company's assertion that they're going to run those losses forever. So I didn't believe it. So I had to take care of it in different ways.

[...]

Q. Well, you suggested it in relation to the standalone model or process with a DCF in relation to SINA, but you can't −− you haven't taken it into account in adjusting the market price particularly for Weibo as at the valuation date; correct?

A. In DCF I did, in different ways, and I'm happy to explain and provide the details. In the market price I didn't, because it wasn't clear to me what market was expecting.

Q. Well, again, let's go back to that. Either the market wouldn't know about that internalisation, which might make it MNPI; correct?

A. That's right.

Q. And that would have to be −− that would affect the efficiency of the Weibo share price; correct?"

A. Not the efficiency. It will be efficient. Just you need to adjust the value.

Q. You make an adjustment. And you have sufficient information to make that adjustment to provide an adjusted trading price for Weibo?

A. If you think the market incorrectly assesses the situation, you would need to adjust it, yes.

Q. But you didn't do that?

A. I didn't have any evidence that there was --

Q. Sorry. And your suggestion that there was a possibility that the market may have priced the internalisation of the costs is speculation on your part; there's no evidence or information that could corroborate that expression—

A. There is no evidence either way." [300]

904. The Company points out that Professor Yilmaz did not make any downward adjustment to his market capitalisation assessment for Weibo.

905. Mr Jaishankar said :

"…in Professor Yilmaz's sum of the parts approach, he's looking at the value of SINA's stake in Weibo as well as the value of the SINA standalone business. And the discussion we just had on his reliance at the end of the day on Weibo's market traded price, I think on a balance of probabilities, does not include that consideration or internalisation of those standalone costs."[301]

906. On the probability that Weibo's market trading price did not reflect the internalisation of Portal's costs, Mr Jaishankar said:

"Q. Well, you don't know if they are or aren't captured in the market price, because that depends on the view that investors take. They may already have baked in the fact that they know it's inevitable at some point Weibo will have to absorb some of these cost?

A. It's possible, Mr McQuater, but I would consider that a bit of a stretch. I think investors generally look at the companies as they find them.

Q. Well, this is the companies as they find it, and they find it in a position where Weibo is getting a free ride that can't go on forever?

[300] {Day 18/7:7} – {Day18/8:1} and {Day 18/8:11} – {Day18/9:16}
[301] {Day10/4:13} – {Day10/4:19}

A. So if someone is a shareholder in Weibo, that investor is not subject to these -- these losses that you see at the SINA standalone level, and they would analyse their investment as such.

Q. Well, let me put it this way. It's untestable whether the market price has baked into it the expectation that Weibo will have to absorb costs?

A. I would agree with you in the absolute, but I would say, on a balance of probabilities, my position is far likelier than yours.

Q. Well, I'm suggesting that it's equally possible the market did expect Weibo to absorb such negative cash flows.

A. I'm not disagreeing with the possibility, Mr McQuater, but I disagree with the characterisation of it being equally probable."[302]

907. Mr Jaishankar further said "*I think the negative cash flows related to Portal are really a cost centre, if you will, because that loss is supporting the Weibo business*[303].

908. The Dissenters criticise this approach because Mr Jaishankar deducts the Weibo indebtedness without giving credit for Weibo's 'obligations' to Sina arising from the running of Portal.

909. The Court prefers Mr Jaishankar's approach on this issue :

"I'm valuing the business as I find it … if the costs were internalised to Weibo, then on a sum of the parts basis, should that be the right way to do it, quote unquote, then the overall value of the sum of the parts would be slightly higher. I'm not disputing that fact. I'd effectively be taking away the free ride that the Weibo shareholders get. But that's not the business as we find it."[304]

910. The Court also accepts Mr Jaishankar's view that a decline in revenues does not presuppose a corresponding proportionate decrease in the negative free cash flows (i.e., a narrowing of the losses). It may be the case that declining revenues lead to increased losses. Similarly, revenue

[302] {Day10/3:3} – {Day10/4:4}
[303] {Day9/126:6} – {Day9/126:9}
[304] {Day9/178:6} – {Day9/178:14}

growth may outpace increases in operating expenses which may result in free cash flows growing at a higher rate.[305]

911. The Court accepts Mr Jaishankar's view that:

> *"A. It's not like Professor Yilmaz's negative 3.99% is winding down the business, it's effectively going into perpetuity on a different cash flow profile. And he's using a decline in the revenue for his PGR, as you say -- I call it a "terminal growth rate", but that's fine. But I don't think the decline in the revenue is the right metric. You have to look at the change in the cash flows, and the negative cash flows are increasing. So to the extent that is happening, you need to use a positive PGR, not a negative PGR based on a decline in revenues."*[306]

912. Mr Jaishankar calculates Sina's standalone's business enterprise value to be approximately (negative) US$530 million as at the Valuation Date and following a number of adjustments Mr Jaishankar calculates Sina standalone's *en bloc* value to be approximately US$596 million.

913. Following Mr Jaishankar's 'walk-forward' analysis, he concludes that Sina standalone value is a (negative) US$530 million.

914. The Court accepts Mr Jaishankar's DCF analysis.

Portal going forward

915. Although the Fintech business was expected to grow in future years, the Portal business was loss making and those losses were expected to continue and to increase in future years.

916. Normally one would expect a business that was forecast to make increasing losses in perpetuity to be wound down in the interests of its shareholders.

917. However, given that Sina's Portal business was important to Weibo's business, the evidence shows that operations of Sina standalone were expected to continue as part of the overall Sina brand and because of Sina's significant investment in Weibo.

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[305] §15.79 of Mr Jaishankar's Supplemental Report
[306] {Day9/173:2} – {Day9/173:13}

918. Mr Jaishankar was asked about this and said:

> *"Q. So SINA absorbs 100% of Portal's losses, but only enjoys 44% of the benefits; correct?*
>
> *A. Yes.*
>
> *Q. Of the collateral benefits –*
>
> *A. Yes.*
>
> *Q. -- of running Portal. So Weibo's other shareholders get a free ride, because they benefit from Portal's brand impact on Weibo, but they don't bear any of the losses that the Portal business generates?*
>
> *A. That's true. That's correct.*
>
> *Q. There's no reason, is there, why SINA, acting in the interests of its shareholders, would allow that situation to persist indefinitely?*
>
> *A. Perhaps not. I can't speak to that structure, Mr McQuater. But it's been happening for a significant historical period, but I agree with you in concept."*[307]

919. He accepted that:

> *"In a world where this is – if I just looked at these cash flows, separate and apart from everything else, that it was some sort of a standalone business that wasn't supporting the larger Weibo business, if it continues to be loss-making, one would question the going concern assumption. And hence you would try and wind that down if you're not earning an appropriate return*". [308]

[307] {Day9/174:2-18}
[308] {Day9/170:25} – {Day9/171:6}

920. He was not willing to accept, however, that there would be no reinvestment in the Portal business, as Professor Yilmaz maintained.

921. Yichen Zhang's evidence on Portal, which the Court accepts (and referred to earlier) was as follows:

> *"Q. But it's not a business that was -- SINA was making money with. So it was something that the shareholders wouldn't have wanted to continue if you'd asked them.*
>
> *A. That's not necessarily true, because the internet portal itself may not be making money, but it's, exactly as the name suggests, a portal. That's where people come in; that's where traffic -- at least part of the traffic comes in. For the same reason, all the other three portals I mentioned still keep their portal going, and they are all losing money. But they are channelling their traffic into their new business, as I was outlining, you know, to WeChat in the case of Tencent, you know, in the beginning. Now, obviously, WeChat generates so much traffic it probably doesn't need its portal anymore, but they still keep the portal running, for the reason of media influence. You have a major brand in the full mind share of the consumers. You don't -- at a small loss or loss that's bearable, you don't shut it down. Because if you shut SINA down as the portal, you think about the doubts people start to have about Weibo, whether to continue to use it. You know, are you going to go bankrupt as well? So it's for media influence reasons. I don't think -- I mean, it's clearly vindicated by other cases as well.*
>
> *Q. As we know from the various opinions, it gets a negative valuation, doesn't it?*
>
> *A. It does, yes.*
>
> *Q. All right.*
>
> *A. It does.*
>
> *Q. So it's not something that anyone would have paid a lot of money for other than Weibo, perhaps?*

A. Unlikely. I don't think anybody is going to pay for it. But to the overall business, it still has value, except that value is not purely its financial standalone value.

Q. It had value to Weibo, but it didn't have value to SINA as such?

A. On a standalone basis, you're absolutely right."[309]

Fintech

922. Professor Yilmaz is of the view that the valuation of a rapidly growing business is typically approached by using a three-stage model in which the middle period is the transition from extreme to normal growth and he uses 10 years for that period. He assumes that Fintech's total revenue will transition on a linear basis from a growth rate of 18.6% in 2025 to a perpetual growth rate of 3.36% after 2035.

923. Mr Jaishankar, whilst he accepted the concept, disagrees with the use by Professor Yilmaz of a three-stage model, on the basis that it has a lengthy transition period (10 years) and is:[310]

"largely a mathematical exercise based on [Professor Yilmaz's] judgmental inputs and arbitrary assumptions".

924. Mr Jaishankar also pointed out that Professor Yilmaz failed to test this with the management at the Management Meeting:

"A. If, in fact, he did have a view as to potential upside for the Fintech business, he could have tested that with management at the management meeting. We had six hours, Mr McQuater, for the management meeting. And I can tell you, four of those six hours was spent by me, and Professor Yilmaz did not test this potential theory with management. He could have done that in the time he had."[311]

and

[309] {Day4/12:5} – {Day4/13:18}
[310] §15.88 of Mr Jaishankar's Supplemental Report
[311] {Day10/17:3} – {Day10/17:10}

> *"…his inputs and assumptions in this regard are not supported by any of his own independent analysis with respect to the underlying Fintech business, industry dynamics, regulatory environment, and so forth - and therefore appear to be based solely on his own "professional judgment."*[312]

925. He said also said this in evidence:[313]

> *"[w]hat I disagree with is what Professor Yilmaz has done, which is extrapolate this thing for ten years and somehow triple the cash flows from – his cash flows from $47 million in 2025 to $138 million in 2035. I don't accept that as a tenable position."*

and

> *"A. What I'm pointing out to you is that you have this sort of a high trajectory that he has used where effectively only 5% of the value is sitting in the discrete forecast period. To put it differently, approximately 95% of his value is sitting in his extrapolation and terminal value. And in my judgment, given my experience with DCFs, that is a very high percentage. When you do DCF analysis, I would say you generally have somewhere between 75% to 85% of the value sitting in the terminal value, and that's sort of an outer forecast. What he's got here is extraordinarily high."*[314]

926. The Dissenters say that Fintech would necessarily have had a higher perpetual growth rate without the negative growth rate applied to Portal bringing down the average Mr Jaishankar has applied.

927. Having reviewed the evidence, the Court accepts Mr Jaishankar's concerns and accepts his terminal growth rate of 3.25% beyond 2025 across both the Portal and the Fintech businesses.[315]

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[312] §15.88 of Mr Jaishankar's Supplemental Report
[313] {Day10/15:15} – {Day10/15:20}
[314] {Day10/23:21} – {Day10/24:7}
[315] Mr Jaishankar selected a terminal (perpetual growth rate) of 3.25% for the purposes of his DCF analysis beyond 2025 with respect to the operating business of Weibo, whilst Professor Yilmaz selected a perpetual growth rate of 3.36%. Both agreed to use 3.30% as the terminal /perpetual growth rate for Weibo going forward

WACC for Sina Standalone

928. Mr Jaishankar applied an average WACC of 10.86% to the forecasted free cash flows and terminal value using the modified CAPM (consistent with his discount analysis for his Weibo valuation) taking into consideration a number of typical inputs and appropriate ranges or point estimates for each.

929. Professor Yilmaz calculates a single WACC of 8.18% despite his approach to calculate the terminal growth rate for Portal and Fintech differently.

930. The Court accepts Mr Jaishankar's view that the WACC applicable to Fintech should be significantly higher given the risks in that business and his general approach.[316]

Reliance on Company beta

931. The Court also accepts Mr Jaishankar's view that Professor Yilmaz's reliance on the Company's beta is inconsistent with his conclusion that Sina's market trading price is inefficient and unreliable as an indicator of fair value.

932. When undertaking a DCF analysis of Sina standalone for the purposes of a cross-check, Professor Yilmaz relies on Sina's observed historical beta in the construction of his discount rate. He therefore must have found some informational value in Sina's beta.

933. During his cross-examination, Professor Yilmaz answered the point in the following way:

> *"Q. … The point here is that you are -- as part of the calculation of the discount rate, you're relying on the Sina beta; correct?*
>
> *A. That's correct.*

[316] §15.102-15.104 of Mr Jaishankar's Supplemental Report, (i) the Fintech business was nascent; (ii) the Fintech business was subject to direct competition from more established market players which added to the uncertainty of its future prospects; (iii) the Fintech business was exposed to an increasingly stringent and evolving regulatory environment (which carried with it risks and uncertainties); and (iv) the inherent additional risks and uncertainties introduced by Professor Yilmaz's inputs, assumptions and extrapolation of the Fintech forecast through 2035 including achieving his projected revenues (growing to US$3 billion by 2035) and undiscounted free cash flows totalling approximately US$1,022 million over his discrete projection period (i.e., from 2020 through 2035) and free cash flows of approximately $144 million in the terminal year

Q. And therefore making the assumption that the share price of Sina is reliable in order to calculate the beta, correct?

A. I mean, for beta calculations, we are looking at the correlation. It's a covariance between market returns and the stock returns. So that doesn't mean the stock is efficient; it doesn't require that. It's just merely a correlation piece.

Q. Well, you're assuming, aren't you, as a necessary input to the assessment or calculation of the beta, that there is informational value in the Sina share price; correct?

A. At the month level, they are correlated with the stock (inaudible). That's the best estimate you can do. Even if the stock is efficient, you still do it. There is no better way to do it. I understand where you're going. This is a standard question.

Q. Yes, but that's not -- you don't make the same assumption or apply the same value when we are looking at the market trading price for Sina when you say it's informationally inefficient; correct?

A. The prices can be half of what it's supposed to be, but the correlations can still be the same. The prices and beta are very different things. Beta is the co – monthly covariance. We are looking at very infrequent data, and it's the covariance that we are looking. We are not looking at the level of the data itself. So this is a fairly common practice. This is the best we can do. I would challenge you to tell me to do it in any other way. You cannot do it in any other way.

Q. I'm not challenging that. I understand how you construct the beta. What I'm saying is that doing that, and accepting or adopting, relying upon the Sina share price, share prices, is inconsistent with your dismissal or your conclusion that the Sina share price is inefficient in the context of the market trading analysis.

A. That's not correct. Your question presumes or asserts that if markets are inefficient, they cannot give you a reliable covariance factor. That is not true." [317]

[317] {Day18/22:15} - {Day18/24:7}

934. The Company argues that had Professor Yilmaz set aside Sina's Market Trading Price as inefficient solely as a result of the existence of a HoldCo discount (on the basis that this was symptomatic of an inefficient market), then what he says might be technically correct.

935. On this view, Sina's share price could be argued to be inefficient on an absolute level yet be informationally efficient.

936. However, the Company says that is not what he in fact did. Professor Yilmaz concluded Sina's Market Trading Price to be (informationally) inefficient pursuant to his event study since on many event days Professor Yilmaz judges Sina's share price to be moving in the opposite direction of what he considers to be appropriate (despite Weibo's impact). The Company submits that if he truly believes this to be the case, he must also deem Sina's beta to be unreliable for the purposes of a DCF analysis, which he fails to do.

937. The Court accepts the Company's proposition.

Inconsistency with Sina event study

938. The Company then goes on to argue that despite Professor Yilmaz's explanation for the inconsistency, his Sina event study is not reliable because he accepted Sina's beta for the purposes of his DCF analysis of Sina Standalone and so must have found that there was informational value in Sina's beta. However, in his Sina event study he found that the market for Sina's stock was informationally inefficient which cannot stand against his use of Sina's beta for DCF purposes.

939. The Court is of the view that this argument goes too far. It accepts Professor Yilmaz's evidence that:

> "*.. It's a covariance between market returns and the stock returns. So that doesn't mean the stock is efficient; it doesn't require that. It's just merely a correlation piece".*[318]

940. In conclusion, the Court accepts Mr Jaishankar's DCF valuation of Sina standalone.

[318] {Day18/22:23} - {Day18/23:1}

Sina Standalone – LTIs and DLOMS for Sina and Weibo

941. The LTI's of Sina and Weibo need to have applied to them discounts to their book value if there are constraints as to marketability for their shares (which are not already priced in).

Sina and Weibo LTIs

942. The principal issue for the Court is discounts, specifically lack of marketability discounts (DLOMs).

943. Sina and Weibo have 39 and 50 private LTIs respectively.

Mr Jaishankar

944. Mr Jaishankar applies a DLOM of 30% to the book value of most of these private investments (and a discount of 10% - 20% in respect of the remainder).

945. The Court is not satisfied, having reviewed Jaishankar 1 Schedules 13 and 14, that sufficient rigour has been applied to 90% of the LTI's grouped together as 'others' which each attracted a 30% discount, save for one which attracted a 15% discount.

946. In addition, Mr Jaishankar accepted that when these LTIs were acquired as private investments, there was no reason to assume for valuation purposes that they were not transactions at arm's length between willing buyer and seller.[319] He had not examined or investigated the circumstances of any of the LTIs.

947. The Court accepts Professor Yilmaz's view that if LTI's are privately held and valued either at book value or by reference to private investment rounds, any lack of marketability is priced in and no DLOM should be applied.[320]

948. Of the small number of LTI's Mr Jaishankar looked at individually, the Court is not satisfied that any specific constraints were identified to justify the discount he uses, which is generic.

[319] {Day11/162:20} – {Day11/163:13}
[320] Professor Yilmaz's First Report §402

Professor Yilmaz

949. Professor Yilmaz only considered those LTIs which were publicly traded and /or subject to a lockup period,[321] and found three such LTIs in Sina and one in Weibo. The one in Weibo was Show World. [322] This was subject to a lock up period.

950. The Court is satisfied, on Professor Yilmaz's evidence, that no DLOM is warranted save in relation to this particular investment of Weibo.

951. In the Court's view a reasonable approach is to apply a DLOM when an identifiable constraint on the disposal of an investment is present, assuming that the constraint has not already been priced into the valuation of the asset.

952. Professor Yilmaz's view was that private investments are valued by reference to a price paid by a rational investor who would have placed a value on any lack of liquidity.

953. Mr Jaishankar also seemed to accept this in principle:

> *"Q. Yes. Now, if I was buying a private company, as the buyer, as an informed buyer, I would be -- I would expect to get a better price for lack of marketability and discount. It's all baked into the price then, isn't it?*
>
> *A. Potentially, yes.*
>
> *Q. Well, it would be, because if I was an informed buyer, I'm not going to pay for it as if it was a completely liquid asset?*
>
> *A. I understand.*
>
> *Q. But you agree with that as a proposition, that's –*
>
> *A. As one factor that goes into SINA or Weibo's buying decision.*

[321] §262 of Professor Yilmaz's First Report
[322] There are two other very small LTIs, Ruhn and Feiyu, which are not considered.

Q. Yes. So -- and that would be incorporated into the price negotiated between arm's length parties?

A. Potentially.

Q. Just like it would for any other asset?

A. Correct." [323]

954. Although Mr Jaishankar seemed to accept in principle that when an investor acquires shares in a private investment, their views on liquidity and marketability will be factored into the pricing such that any liquidity discount is already priced in at point of entry, he made clear that he was not accepting that this was the case in an open financing round with a fixed price offer.[324]

955. The Court prefers an approach, which Professor Yilmaz also advocates in relation to the HoldCo discount debate, of applying discounts to specific circumstances for identifiable reasons.

956. The Court accepts his general approach of not applying a DLOM to privately held investments.

957. Professor Yilmaz was criticised for relying on academic texts to apply the same discount of 6% to the few investments he chose.[325]

958. He said this in response:

"Q. ...The main criticism of the discounts you do adopt, and I think it's right -- am I right in saying that you apply a discount to the SINA investment in TuSimple, and then you apply, I think it's just three discounts in relation to SINA's long-term investments involving Qiang(?), Daily Interactive and Show World; correct?

A. I mean, I used -- I don't remember the names of the firms sitting here, obviously, but yes, I use it for three firms.

[323] {Day11/163:12} – {Day11/164:5}
[324] {Day11/175:14} – {Day11/176:20}
[325] Show World, Daily Interactive and Tiange

Q. But only three?

A. Yes, publicly traded ones.

Q. And again, you apply the same discount of 6%; correct?

A. That's correct.

Q. And the primary motivation or foundation for your 6% discount is academic work; correct?

A. From research, yes, that's correct.

Q. Well, from other people's research, which are reproduced in academic texts; correct?

A. That's correct.

Q. So not by reference to the particular attributes or a consideration of the particular types of investment that SINA -- particular types of long-term investments that SINA had and that Weibo had; correct?

A. Yes. I actually considered that. If I had done that and corrected the mistake of Cabrillo Advisors, I would have actually come up with a much smaller discount for lack of marketability. I used the ones that was accepted in peer-reviewed journals.

Q. Well, you say that. You simply take 6% from academic texts which are completely dissociated from the actuality of the long-term investments of SINA and Weibo and their particular attributes; correct?

A. I think that was the best decision to make…"[326]

[326] {Day18/187:3}-{Day18/188:6}.

959. Professor Yilmaz applied a DLOM of 6% to each of the LTIs held by Sina and one by Weibo[327] in publicly listed stocks and applied the same 6% DLOM to Sina's investment in TuSimple.

960. The Court accepts his evidence that the quantification of DLOMs has been the subject of various peer-reviewed empirical analyses. Earlier analysis from the late 1980s and early 1990s quantified the historical DLOM at between 7% and 14%. However, the more recent and perhaps more sophisticated analysis by Comment (2012) finds that the DLOM should be no greater than 5% to 6%.[328]

961. The Court regards this as a good basis from which to apply the DLOM which Professor Yilmaz uses.

962. Mr Jaishankar by contrast does not cite any empirical or academic analysis that supports the higher level of DLOMs that he applies.

963. Mr Jaishankar in fact looked at the whole "bucket" containing all the LTIs held by Sina and Weibo, rather than valuing them in detail individually, because he said he had to apply some level of materiality to his analysis[329] and because it had been agreed between the experts that Sina's investment in TuSimple warranted more attention.

964. Mr Jaishankar accepted that he had used a "*broad brush metric*" and had not "*individually looked at each LTI and thought this is what's right for that LTI*"; and that this was not a "*precise analysis, investment by investment*.[330]

965. The Court finds that this 'portfolio approach' is not suitable from which to draw generic conclusions when the material facts of each LTI have not been looked at.

Conclusion

966. The Court prefers Professor Yilmaz's approach to the LTIs under consideration and their discounts:

[327] Daily Interactive, Tiange and Show World
[328] See Professor Yilmaz's First Report § 263 fn 239 for papers cited
[329] {Day11/167:17}-{Day11/168:5}
[330] {Day11/165:17} – {Day11/168:9}

a) In the case of Show World, a DLOM is warranted because the company's stakes were subject to a lock up period that expired in December 2022.

b) As to Daily Interactive and Tiange, Sina's status as the largest shareholder meant that it was subject to restrictions on the disposal of its shares, warranting a DLOM.

967. The Court accepts Professor Yilmaz's approach to the LTI's held in publicly traded stocks for the reasons he gives and at the rate he identifies for the cost of the delay in realising the particular asset.

DLOM re TuSimple

968. On the issue of a DLOM for TuSimple the Court again prefers Professor Yilmaz's analysis based on the material he relied on, rather than Mr Jaishankar's analysis.

969. Mr Jaishankar is right in that what one is looking to measure is exit value:[331]

> *"A: But what I'm saying is, with the passage of time, if you start looking at these investments and you're asking from the market participant perspective, what would someone pay knowing what we know about these investments, which is not a lot, I would respectfully say that market participants in the real-world apply such discounts."*[332]

970. However, Mr Jaishankar values TuSimple solely by reference to the price used in the private Series E financing, to which he applies a 10% DLOM.

971. The Court accepts Professor Yilmaz's view that the right approach is not to apply a DLOM in the non-IPO scenario, because the 'lockup period' of 180 days would not apply if the IPO did not complete, and the Series E financing is a private investment and so any illiquidity discount is already priced in.

Valuation of TuSimple

972. This is the last significant valuation issue on which a decision is required.

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[331] {Day11/164:6} - {Day11/165:15}
[332] {Day11/167:10} - {Day11/167:16}

973. Sina held its 29.8% stake in Tu Simple via its wholly owned subsidiary, Sun Dream Inc.

974. The experts take a very different approach to valuing TuSimple. Mr Jaishankar bases his valuation on a transaction price arising from an equity financing (Series E), and Professor Yilmaz considers the probability of a future IPO which was in the making.

975. Both experts agree that in a 'non-IPO scenario' (to which Professor Yilmaz only gives a 10% probability) the Series E valuation is the relevant input in estimating the equity value of TuSimple.

976. A short chronology of relevant events shows that the completion of the IPO for TuSimple was connected to the merger transaction by Sina. The evidence shows that the management of TuSimple and its advisers, Morgan Stanley USA, had formed the view that the TuSimple IPO could not have proceeded at a time when Sina remained a listed company. Once the Sina transaction completed they wished to then reduce 'Chinese ownership" in TuSimple.

Short chronology

977. - The EGM at which the Sina merger was approved took place at 9am on 23 December 2020 in Beijing.

- Later on 23 December 2020 (+13 hours, New York time), TuSimple confidentially filed with the SEC its draft Form S-1 relating to its proposed IPO.

- The confidential filing of the draft Form S-1 was ratified by the board of directors of TuSimple on 22 January 2021.

- TuSimple became a US company in February 2021.

- The Merger was not completed until 21 March 2021.

978. TuSimple publicly filed with the SEC its Form S-1 relating to its proposed IPO on 23 March 2021 following completion of the Merger. The TuSimple IPO was launched and completed on 15 April 2021.

979. The Court does not find that there was an appreciable 'non-IPO scenario' for TuSimple on the facts.

980. In an IPO scenario, which on the facts of this case is in the Court's view the relevant context, Mr Jaishankar applies a 50:50 weighting as to the prospects of completion.

981. Mr Chao's evidence was that at the Valuation Date he himself did not know when any IPO for TuSimple would take place or at what amount the shares would be priced:[333]

> *"Nobody does this … 70% discount to IPO price for pre-IPO round, if Morgan Stanley does their job unless IPO was so uncertain".*
>
> *…*
>
> *"That's why series E is at 70% of discount to the IPO, just because IPO was so uncertain, they don't [know] when and how much it would be priced."*

Mr Jaishankar

982. Mr Jaishankar concluded that the appropriate valuation of Sina's investment in TuSimple, on a per share basis, based on the Series E price was US$14.14, less a DLOM of 10% (i.e., US$12.73).

983. Mr Jaishankar relied on: (i) the 409A valuation reports in respect of TuSimple's common stock that had been prepared by Cabrillo Advisors as of 30 September 2020, as of 31 December 2020 and as of 4 March 2021*;* (ii) the fact that Sun Dream (as nominee for Sina) had sold a number of its shares in TuSimple to third parties using the Series E pricing of US$14.14; and (iii) the fact that TuSimple had converted its loan into Series E-1 Preferred Shares at a 10% discount to the Series E pricing.

984. Mr Jaishankar assessed the value of TuSimple by reviewing Cabrillo's valuation reports which contemplated an IPO scenario and a non-IPO scenario with each being given a probability of 50% which he says was based on input from TuSimple's management.

985. The pricing on the Series E round was based on Morgan Stanley USA's estimate provided by Tu Simple's management to Cabrillo. Mr Jaishankar took account of the fact that Sun Dream

[333] {Day5/114:9} – {Day5/114:11}and {Day5/126:10} – {Day5/126:12}

had sold shares to third parties in January 2021 at the same price, US$14.14 that was used for the Series E round of financing.

986. Mr Jaishankar concluded that the value of Sina's ownership interest in TuSimple was US$781 million before the application of a DLOM. The appropriate per share price in respect of Sina's investment according to him was US $14.14 less a 10% DLOM, resulting in a value per share of US$12.73.

987. The Cabrillo Report values TuSimple at US$3 billion in the IPO Scenario.

988. The Court accepts the Dissenters' case that the problem with Mr Jaishankar's reliance on the Cabrillo material is that it contains no valuation analysis in support of that figure. No one from Cabrillo gave evidence at trial. Their approach, assumptions and reasoning were not tested.

989. Whilst the valuation is stated to be "*based on underwriters' estimates provided by Management*", Mr Jaishankar accepted that Cabrillo took the figure of US$3 billion as an input number, without further analysis.[334] The Cabrillo Report states in terms that Cabrillo did not independently verify the information provided to them. This does not present a sound basis for acceptance of this figure by the Court.

990. Neither does the fact that, as the Dissenters point out, the last Cabrillo valuation report is dated 19 April 2021 and gives an IPO valuation of US$4.5 billion and an IPO probability of 55%. By that date they point out that the TuSimple IPO had already occurred and had achieved a valuation of c.US$7 billion.

Professor Yilmaz

991. Professor Yilmaz gives a 90% weighting to an IPO scenario and adopts a comparables/multiples analysis. The 90% IPO scenario under a multiples approach gives a value of US $7.2 billion which he discounts back to the Valuation Date and applies a 20% IPO discount, as well as a DLOM which yields a value of US$6.6 billion for TuSimple. A weighted value of $6.2 billion as at the Valuation Date given the Company's 29.8% stake in TuSimple represents $1.8 billion attributable to the Company or US$30.53 per share.

992. The Court has concluded that this is a reasonable approach.

[334] {Day9/62:19} – {Day9/63:1}

Comparables/multiples

993. Professor Yilmaz's approach to valuation in the IPO scenario is to use a multiples valuation applied to TuSimple's forecast revenue, with a cross-check applying a multiple to the value implied by the Series E financing and a further cross-check by a DCF analysis.[335]

994. Professor Yilmaz relied upon empirical evidence, compiled in a paper by Kim and Ritter (1999), which shows that companies undergoing an IPO are best valued using a multiples approach applied to forecast rather than historic performance.

Quality of TuSimple projections

995. The Court places no weight on the fact that the projections differed for example as between 16 December 2020 and 23 January 2021.

996. It accepts Professor Yilmaz's view that such changes are:[336]

> *"…quite common for young firms. People make projections. They get feedback from their supervisors, or sometimes their equals, or other organisations like their bankers. And it's a team effort; they converge"*

997. The Court does not accept Mr Jaishankar's view that it has been shown that the projections were prepared for the purpose of presenting an illustrative possibility for IPO pricing, rather than an indicative value for the business at the time, based on the deposition testimony of Pamela Roxas of Morgan Stanley.

998. Having reviewed the extracts from Ms Roxas' deposition at issue, it is clear she was talking about a document dated 15 June 2020 (the EUC Memo) not the projections dated 23 January 2021 which Professor Yilmaz uses. The Court is of the view that he was entitled to use those projections (although they postdated the Valuation Date) because they were available in substance by the Valuation Date.[337]

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[335] Similar to the approach Morgan Stanley took
[336] {Day 15/132:9-20}
[337] Professor Yilmaz's First Report paras 353-354

999. Professor Yilmaz uses TuSimple's projected revenue for 2025 as the basis for his multiples analysis. The Court finds that the use of a revenue projection (rather than an earnings projection, for example) is appropriate. A later date would introduce more uncertainty. An earlier date has not been calculated by Mr Jaishankar.

1000. The year 2025 was the first year in which TuSimple was forecasted to have positive earnings, which mitigates to some extent one of the issues identified by Professor Damodaran, that the use of revenue multiples for a firm that is generating revenue, but losing money, can risk overvaluing that firm.

1001. Professor Yilmaz's multiple of 2.4x is taken from his comparators' five year forward revenue forecasts and their current enterprise values. For the median of his group 1 and 2 comparators, the current enterprise value is 2.4 times the forecast revenue figure in five years' time. For that reason, he applies the multiple to TuSimple's 2025 revenue forecast alone.

1002. This approach is in accordance with academic learning from Professor Damodaran on this topic which Mr Jaishankar seemed to accept.[338]

1003. According to Professor Damodaran it is a method that is apposite for firms that have little in revenues currently but are expected to grow rapidly over time so that the revenues in say five years, are likely to better reflect the firm's true potential than the current revenues. He says it is easier to estimate multiples of revenues when growth rates have levelled off and the firm's risk profile is stable which is more likely to be the case in five years' time. This seems reasonable to the Court.

1004. The approach Professor Yilmaz adopts, to forecast the expected revenue in five years for each of the comparable firms and to divide each firm's current value by these revenues, was one of the ways Professor Damodaran suggested of performing a forward revenue multiples valuation.

1005. As the Court has found in relation to Professor Yilmaz's Sina standalone analysis, the comparables/multiples methodology suffers from the main difficulty of finding companies which are suitable and proper comparators.

1006. However, in this instance Morgan Stanley used many of the same comparable companies as Professor Yilmaz, which supports his selection. They were the underwriters for the IPO and

[338] {Day9/80:21} – {Day9/81:4}

their own preliminary valuation presented as at the Valuation Date stated that TuSimple could achieve a valuation in the range of U.S.$ 5-7 billion.

1007. Mr. Jaishankar's evidence was that Professor Yilmaz's analysis cannot be relied on because the companies selected had an appreciable size difference, were at different stages of their business life cycle and had more revenue, and were actually manufacturing vehicles not just leasing them. He also pointed out that the analysis was based on only a few analysts projected revenues for those companies for 2025.[339]

1008. The Court does not agree with Mr Jaishankar and finds Professor Yilmaz's analysis reliable. All of the companies used as comparables were public companies because only public companies had a market capitalization from which a multiple could be calculated. It was therefore inevitable that those companies were more advanced in their development than a company undergoing an IPO, yet the analysis of the academics (Kim and Ritter) find that valuation by forward multiples is the best way to value such a company. The Court accepts the conclusions they draw from the study they made in 1999.

1009. The Court is satisfied that the adjustments based on his judgment brings back those companies Professor Yilmaz selected so that they were more aligned to TuSimple.[340] So, for example the largest comparable by far is Tesla and he looks back to 2013 when its market capitalization was much lower and calculated a 5-year revenue multiple of 2.0 for Tesla at that time. The Court is satisfied that he has introduced sufficient control for the size differential.

1010. Professor Yilmaz also performed a cross check of his valuation by reference to empirical evidence that the valuation of companies undergoing an IPO tends to be several times the value implied by their last pre-IPO round of financing.[341] This analysis in which he used the Series E price, was not challenged and supports his primary valuation.

1011. He also performed a DCF valuation as a further cross check which came out at such a high valuation that he does not rely on it.

[339] §§13.11(i) and 13.35-13.46 of Mr Jaishankar's Supplemental Report
[340] See Table VIII-2 contained in Professor Yilmaz's First Report
[341] Cochrane (2005)

Probabilities

1012. As to probabilities, the Court notes the view of Mr Jaishankar on this which he says was supported by TuSimple's management as recorded by Cabrillo in their report of 31 December 2020 as to the chances of the IPO actually proceeding to completion, namely a 50:50 chance.

1013. However, Cabrillo were engaged by TuSimple to conduct a valuation, in the context of the potential IPO, for the purposes of assessing employee share options in those shares for submission of federal tax filings to the Inland Revenue Service in the US. They prepared detailed reports on 25 January 2021, 17 February 2021, and 4 March 2021 (dated 19 April 2021). None of those reports prepared at the time gave probability weightings of the IPO completing of more than 55%.

1014. This does not seem to the Court to be a fair and reasonable prediction in the context of the Court's approach to the probabilities of the TuSimple IPO in this case. The Cabrillo report was prepared for tax reporting purposes in relation to TuSimple employees stock options. There is no evidence from any witness as to how these reports were produced, nor has there been any disclosure from TuSimple in this trial.

1015. The Dissenters point out that Mr Jaishankar's reliance on the Cabrillo report, which applies a value to each class of TuSimple shares, does not accord with the much higher values realised for those same classes in the Sun Dream transactions.

1016. There is no evidence before the Court as to any specific enquiries that were made by Cabrillo of TuSimple's management.

1017. The Court does not give the Cabrillo reports the weight that Mr Jaishankar does, and forms its own view of the probabilities based on all the evidence.

1018. The Company criticised Professor Yilmaz's reliance on an analysis undertaken by Jarod Humphrey published in 2024 to assert a 90% probability of an IPO. The Company argued that such a study was not relevant for foreign issuers, or confidential filings and inapplicable on a number of levels when subjected to forensic analysis.[342]

1019. The Court does not agree that the Company's criticisms render the Humphrey analysis invalid.

[342] See §9.36 Jaishankar Supplemental Report and see§§ 13.61-13.68 of Mr Jaishankar's Supplemental Report

1020. Jarod Humphrey's report published in 2024 shows that from 2013 onwards over 93% of companies that filed an S1 registration statement completed their IPOs.

1021. It is true that he was not dealing with confidential filings, there was no public filing in TuSimple until March 2021, and he only referred to US domestic companies.

1022. However, it remains a well-researched study which the Court found to be useful and has considered as to the probability of a filed IPO being withdrawn.

1023. The Court is of the view that contemporaneous material in the context of the IPO also supports the conclusion that the IPO was very likely to go ahead. Morgan Stanley was of the view on 23 June 2020 that the Series E financing round would be the last private round of financing before an IPO.

1024. Planning had already started at TuSimple, before it was publicly reported on 31 August 2020, to pursue an IPO the following year in 2021.

1025. It seems to the Court based on the available evidence, that it was known or knowable that substantial preparation for an IPO was being undertaken four months prior to the Valuation Date and that TuSimple would file and filed its S1 registration statement at about that time.

1026. The Court has concluded that a reasonable view of the probability of the IPO completing on all the available evidence is 80:20.

1027. The Court prefers Professor Yilmaz's weighted average price per share equal to the series E pricing for the non-IPO scenario with no discount.

1028. Having reviewed his evidence[343] and having decided that this does not involve impermissible hindsight, the Court accepts Professor Yilmaz's approach of looking at when the IPO was in fact launched, on 15 April 2021, and then discounting back the value calculated as at that date, to the Valuation Date some four months earlier. That seems to the Court to be a reasonable approach.

[343] {Day16/28:10} – {Day16/29:11}

1029. The contemporaneous material shows that as at the Valuation Date it was expected that the IPO would take place around that date[344] and so could fairly be said to be knowable without the use of hindsight.

CFIUS

1030. In its opening submissions and in cross-examination of Professor Yilmaz, the Company sought to suggest that the probability as at the Valuation Date of TuSimple's IPO completing was affected by the intervention of the Committee on Foreign Investment in the United States (CFIUS).

1031. Having reviewed the relevant material[345] the Court agrees with the Dissenters that in fact, the object of CFIUS's interest was not concerned with the IPO or indeed with Sina. It was also commenced months after the Valuation Date.

1032. Moreover, the CFIUS review did not in fact impede the IPO, since the IPO went ahead while the review was underway.

HoldCo and minority discounts

HoldCo discount

Mr Jaishankar's view

1033. Mr Jaishankar's applies a HoldCo discount.

1034. His view is that a HoldCo discount can be observed when the value of a holding company as reflected by its market capitalization, driven by its market trading price, is less than its otherwise calculated '*en bloc'* value under the SOTP approach.[346]

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[344] Morgan Stanley "Preliminary IPO Valuation and Sizing Considerations" dated 23 December 2020 (the Valuation Date) refers to a future IPO in "mid-March 2021";all three versions of the Cabrillo Report refer to an estimated IPO date of 30 April 2021.

[345] Including the legal advice obtained by Morgan Stanley in October 2020 that the risk of intervention from CFIUS was low

[346] Sina's implied SOTP equity value has been calculated by Mr Jaishankar as the sum of: (i) the value of Sina's stake in Weibo (based on discounted cashflow analysis); (ii) the value of Sina's standalone business; (iii) the value of Sina's standalone LTIs; and (iv) the value of Sina's standalone net cash - minus: (i) the size of Sina's liability to Weibo; (ii) the amount of Sina's litigation reserves; and (iii) minority interest.

1035. In 2017 Aristeia stated its belief at the time that Sina was "*the most heavily discounted U.S.-listed holding company in existence*".

1036. His pre-discount SOTP valuation of Sina is US$85.66 per share. He applies tax discounts and DLOMs to reduce this to US$73.75 per share.

1037. Mr Jaishankar then applies an additional 42.5% "HoldCo discount" that reduces his SOTP valuation by a further U$31.34, to US$42.41.

1038. That has a significant effect on the fair value outcome for the Dissenters in this case, indeed it is the largest (by value) disputed issue in the case by far.

1039. According to Mr Jaishankar a HoldCo discount is well understood by corporate financiers and corporate valuers alike by whom such a discount is frequently applied.[347] Morgan Stanley applied a HoldCo discount in their Fairness Opinion.

1040. He says: *"one cannot simply turn a blind eye to the long history of the HoldCo discount inherent in the market trading price of the hundreds of millions of Sina shares traded over many years*".[348]

1041. He observes that the Company's historical HoldCo discount was in the range of approximately 35% to 50% over most of the two years preceding the Announcement Date. He takes a midpoint of 42.5% estimate for the discount he applies.

1042. He says that the:

> *"...prevalence of the HoldCo discount observed throughout the Relevant Period strongly supports its (consistent) applicability to an SOTP analysis in arriving at a determination of the fair value of the Dissenters' shares"*.[349]

[347] He says a Holdco discount has been applied in publicly traded stocks including, for example: Sohu.com, Swire Pacific Limited, Softbank Group Corp, Fosun International Limited, Naspers, Kingsoft.
[348] See §7.9 of Mr Jaishankar's Supplemental Report
[349] §15.160 of Mr Jaishankar's First Report

What does the HoldCo discount represent according to Mr Jaishankar?

1043. His view is that the existence of the HoldCo discount represents the market's consensus as to the overall unattractiveness for a minority shareholder to buy into the Company, which is largely a holding company in which its controlling stake in Weibo is largely illiquid, and which itself holds a collection of long-term investments.

1044. Sina's dual class share structure in which New Wave owns all the Preference Shares issued is also to be considered, according to Mr Jaishankar, as another reason for the existence of the HoldCo discount.

1045. Mr Jaishankar's evidence was that the fundamental value of Sina on an *en bloc* basis is represented by the aggregate net valuation of the assets. He said that the HoldCo discount did not apply to the value of the Company *en bloc but* did apply to the value of the Dissenters' shares.[350]

1046. That was because, according to Mr Jaishankar, owning those assets through Sina was less attractive to them and in assessing the fair value of the Dissenters' shares, one had to value what they possessed.

1047. He said that Sina's value from its standalone business operations, which were loss making and 'value negative', contrasted with the value of its long term investments, including Weibo.[351]

1048. His evidence was that, based on his experience, a HoldCo discount can occur for a number of reasons, including:[352]

a) an inability to control the timing and amount of cash flows and/ or distributions from the corporate structure;

b) a complex and or opaque multi layered organisational structure which made it more difficult for investors to accurately assess where value or value leakage may exist;

[350] {Day7/100:12} – {Day7/101:20}
[351] See §15.130 of Mr Jaishankar's First Report
[352] {Day7/56:16} –{Day7/75:20}, {Day7/75:21} – {Day7/76:13} and {Day7/79:3} – {Day7/83:4}; and see §§15.133 and 15.34 of Mr Jaishankar 's First Report

c) investments in publicly traded shares in the holding company's investment portfolio where investors could choose to invest directly in such listed companies or subsidiaries, rather than indirectly;[353] and

d) long term investments where it may be necessary to apply a DLOM (he was of the view that applying a HoldCo discount did not represent a duplication).[354]

1049. The recognition and reflection in Sina's share price, according to Mr Jaishankar, of a HoldCo discount is symptomatic of efficiency in the market for the Company's shares[355] and it supports his reliance on the market price as an indicator of value.

1050. On this aspect the Court has found that the market for Sina's shares has not been shown to be efficient and so the support he seeks to draw in this regard is not made out.

Analysis

1051. There is good evidence to conclude that the HoldCo discount is an observable phenomenon. However, in the Court's assessment none of the matters advanced by the Company and Mr Jaishankar lead to the conclusion that Mr Jaishankar's approach of reflecting a HoldCo discount when assessing the fair value of the Dissenters' shares is appropriate or justified.

1052. The Company has not shown that it is a necessary metric or input into Sina's valuation, or that there is a good reason to apply it in a fair value determination of the Dissenters' shares.

Control

1053. An inability to control the timing and amount of cash flows and/ or distributions from the corporate structure seems to the Court to be something which would apply to any minority shareholder of a company, irrespective of whether the company was a holding company or not. That might be reflected in a minority discount.

[353] {Day7/79:3} – {Day7/83:4}
[354] {Day7/66:5} - {Day7/68:13}
[355] See §7.17 of Mr Jaishankar's Supplemental Report and {Day7/75:21} – {Day7/77:16}.

1054. Logically a HoldCo discount would be something different from a minority discount, which if applied is typically modest in these circumstances, and certainly nowhere near 42.5%.

Perception of poor corporate governance/value leakage, opaque structures

1055. Mr Jaishankar said that poor corporate governance or the perception of poor corporate governance could give rise to a discount.[356] He said that complex and /or opaque multi-layered organisational structures might make it more difficult for investors to accurately assess where value and/or value leakage may exist.

1056. That may be true, but in the Court's view poor governance and opacity are capable of being corrected, or at least addressed, by the management of the Company.

1057. If the Court were to factor that into account when assessing the fair value of shares held by Dissenters, it was likely that the merits in the context of just and equitable treatment in a fair value determination would play to the benefit of the Dissenters, not the Company.

1058. As a general matter and in fairness terms, it would be wrong for the Company to benefit by way of a significant discount in relation to a fair value determination from its own 'corporate mismanagement.'

Evidence and support

1059. Furthermore, none of the factors put forward which are said to explain a HoldCo discount is corroborated by empirical evidence or academic analysis from Mr Jaishankar.

1060. When questioned about the lack of empirical evidence or academic support used in his analysis of the HoldCo discount, Mr Jaishankar said that he relied on his own valuation experience*:*

> *"A. In my 20 years plus of experience dealing in litigation matters, including in private companies with holding company structures, I have looked at various issues around minority discounts and the like, including holding company discounts. So yes, this is based on my experience*".[357]

[356] {Day11/133:19-24}
[357] {Day7/58:8} - {Day7/58:15}

1061. Not only does Mr. Jaishankar cite no academic or practitioner texts in support of a HoldCo discount, he accepted he had never personally applied a HoldCo discount in practice.

Mispricing

1062. As to his reference to certain publicly traded stocks in particular companies, the Dissenters do not dispute that in some cases, holding companies trade at a discount to the value of their holdings. That they say can be due to mispricing.

1063. The Dissenters point out that Mr Jaishankar has not undertaken an analysis that supports his assertion that the market value of the four holding companies he cites[358] equals their fair value, or to rule out the alternative explanation that the fair value of those companies equals the value of their holdings, and the observed 'HoldCo discount' is a mispricing.

SOTP valuation

1064. The Court accepts the Dissenters' case that the quality and attractiveness of the Company's investments and assets is logically reflected in the valuation of each of them individually.

1065. This can be represented in a traditional valuation by the best estimate of the present value of the anticipated future cash flows from those assets in the component parts of the business, discounted as appropriate to reflect any constraints and frictions that applied to them individually.

1066. Those valuations whether through a multiples or DCF analysis, and whether loss making or not, would be reflected in the SOTP valuation of Sina applying any relevant individual discount.

Owning shares via Sina

1067. Owning some of those assets through Sina, in the Court's view, does not make them intrinsically less attractive for that reason. It might be fairly said that owning a share in Weibo indirectly via Sina gives the same ultimate entitlement to Weibo's cash flows as owning the share directly would do.

[358] Sohu.com, Swire Pacific Limited, Softbank Group Corp, Fosun International Limited

1068. Sina's shares traded at a substantial discount to the market value of Sina's stake in Weibo. Owning Sina shares could be said to be a cheaper way, when compared to owning Weibo shares direct, of accessing the same economic entitlement to Weibo's cash flows.[359]

1069. The Court accepts the Dissenters' argument that it may well be the case that the market participants bought shares in Sina to gain access to Weibo at a lower price and without that the shares in Sina would not have been as attractive.

1070. The Court also recognises the Dissenters' argument that owning the shares via Sina might be thought to be preferable even if the prices were equal, because Sina has a controlling stake in Weibo, and so buying into Weibo via Sina may mean buying into an element of control of Weibo, whereas a minority share in Weibo confers no control.

Mr Jaishankar's answers to the Court

1071. The Court had the following exchange with Mr Jaishankar:

> *"JUSTICE PARKER: Can I just ask a question –*
>
> *MR MCQUATER: Of course, my Lord.*
>
> *JUSTICE PARKER: -- before you go on. You [Mr Jaishankar] have gone back to that legal test, which is the right test to be applying to the issue at hand. What are the factors that you would refer me to, apart from the position of the dissenters as minority shareholders? When you're just looking at the question of what is the value of that share to that dissenter, what are the factors you would refer me to say that a holdco discount is appropriate to valuing that share?*
>
> *A. Right. So my answer to that, your Lordship, would be SINA is not a typical operating business. Its standalone operations are generating negative cash flows as at the valuation date.*
>
> *JUSTICE PARKER: It's got a very profitable subsidiary.*

[359] {Day18/238:20-241:11}.

A. Well, yes, if you ringfence just the standalone that's sitting in SINA itself, then, yes, I think that's right. It's not profitable on its own.

JUSTICE PARKER: The Portal business is loss-making.

A. Correct. And the Fintech business has some positive cash flows. And I know we will have a debate about what that means. But on a net basis, when you look at it, SINA has negative cash flows, setting aside everything else that it holds. So if you're sitting there as a market participant, thinking of investing in a marketable minority position in SINA, you're considering: what am I buying into? I see this loss-making, standalone business. I see a portfolio of long-term investments that SINA owns, based on its views in terms of wanting to invest in the technology sector. I don't consider SINA a typical conglomerate. But at the same time, it's not like all these investments are synergistic, if you will. For example, the TuSimple investment doesn't really have anything to do with SINA's operating business. So you sit there as a market participant and you ask yourself: is this a portfolio of investments that I want to buy into? And again, there's no clear liquidity event to you as a minority shareholder at SINA in terms of that investment being sold and a distribution coming out. So there's a lot of timing uncertainty as well. And then the third component is with respect to the control position in terms of the stake in Weibo. It's a significant number of shares. I think it's -- I can't remember the number. Apologies. But it's a significant stake in Weibo. And you have to ask yourself as a market participant, if – and that stake in Weibo, your Lordship, is driving approximately half the value of SINA. So you have to ask yourself as a market participant: would I rather invest in SINA, and therefore indirectly into Weibo, or would I rather invest directly into Weibo and have a closer nexus to the cash flows that drive that value? So these are the considerations that you have to look at when purchasing shares of SINA, notwithstanding the fact that you're buying into a dual-class share structure, where one person and one entity effectively has control of SINA.

JUSTICE PARKER: I follow that, but the -- when you're looking at the operations and the assets and the investments, you would apply your discount right across the piece, even though the component pieces of SINA are quite different?

A. Correct. It's a blended amount, your Lordship, because that is a market view in terms of having looked at the different components that are sitting in SINA. What is the discount that it's trading at to that calculated value, if you will. So if you were to accept that on a sum of the parts valuation as at the valuation date, that before the application of a holdco and/or a minority discount, that the value of SINA was roughly $74 a share, on an en bloc basis, so then the question is: how do you bring that back in terms of the true worth of the dissenters' shares as you find them? And that's where the holding company discount and/or the minority discount factors in. And I would say –

JUSTICE PARKER: So you're going back to value in the way that you describe that. The dissenters of course say that's reverse-engineering, and really there's no legitimacy in approaching discount as an input at all on value.

A. I understand they say that. All I'm saying is I've -- if you consider SINA to be efficient, that the market understands it. It's not a complex proposition in terms of what it holds, and yet it trades at this discount. All I'm saying is there's an extra step to be made from the fundamental value of a company to the value of the shares. And I think what the dissenters are really asking for is a pro rata share, effectively, of the fundamental value of the company, which in my view is more akin to the Delaware standard, as opposed to my understanding of the Caymanian standard.

JUSTICE PARKER: Well, I think this might be the first case which properly considers a holdco discount.

A. Right.

JUSTICE PARKER: So thank you for that."

Analysis

1072. The Court in a fair value determination in this jurisdiction assesses the characteristics and attributes of the shares which the Dissenters possessed at the Valuation Date.

1073. The Court accepts the Dissenters' case that to support any discount it must be shown that the market price reflects a discounted value and, in each case, why.

1074. In the Court's view Mr Jaishankar's 42.5 % HoldCo discount, which he applies across all the assets and investments of Sina, does not do that.

1075. Professor Yilmaz says that the implication of Mr Jaishankar's view is that each of the Dissenters' shares was worth only 57.5% of their pro rata share in the fundamental value of the Company with the remaining 42.5% of value (and implicitly the corresponding cash flows) disappearing.[360]

1076. The Court notes that a "Holdco discount" has not been recognised in any case law or legal commentary to which it has been referred. This would appear to be the first time in which it has been given consideration in a fair value appraisal case.

1077. The Court observes that if it was a well-known and valid valuation input one might imagine, given the similarity of corporate structures that have been considered by the Courts in the Cayman Islands and elsewhere, it would have been considered by now.

1078. Be that as it may, having considered the matter from first principles, whilst the HoldCo discount might be an observable phenomenon,[349] the Court prefers Professor Yilmaz's view that its application to a fair value determination of the Dissenters' shares in the Company is not justifiable.

1079. The Court has concluded that an observed phenomenon of such a price/value discrepancy over time cannot without more simply be applied as a generic discount in a fair value appraisal of the Dissenters' shares across all of Sina's assets and investments, as Mr Jaishankar suggests.

1080. The Court accepts Professor Yilmaz's view that one should assess discounts by reflecting constraints and frictions that the investor actually faces, in the economics of the component part of the business or asset/investment under consideration. This in the Court's view is an appropriate and justifiable way of assessing the true worth and therefore the 'fair value' of the Dissenters' shares.

1081. The Court accepts Professor Yilmaz's approach that there should be a rigorous, systematic assessment of any applicable discount to any asset and investment grounded in justifiable and measurable economic forces.

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[360] Professor Yilmaz's Supplemental Report §328
[361] Professor Yilmaz's First Report §501

1082. Professor Yilmaz observed that:[361]

> "*importantly, a careful valuation should refrain from applying broad based discounts that are poorly measured or not ground in precisely identifiable economic forces"*

1083. It seems to the Court to be right in principle that each individual asset and investment of the Company should be assessed separately to determine whether a discount should apply and why, rather than applying a blanket discount across the board.

1084. In other words, without proper justification in each case, the evidential burden to justify a discount cannot be fairly discharged.

1085. The Court accepts Professor Yilmaz's view that it does not make sense from an economics standpoint not to have identified a substantive and principled explanation for any such discount, before it is applied across the board to a SOTP valuation.

1086. The Court accepts his view that the size of each discount to be applied should be determined based on evidence to see what the economic drivers are. Furthermore there should be no double counting.

1087. Simply saying, as the Company effectively does, that the discount existed and can be observed when the market capitalisation of the holding company is less than its otherwise calculated '*en bloc'* value, and therefore, since one has to value what the Dissenters have to sell, you take the discount as you find it at the Valuation Date, is not justifiable or appropriate.

1088. As to how to approach such an observed phenomenon Professor Yilmaz said this in evidence:[362]

> *'Q. Well, in your first report, that we're looking at now, you do appear to be essentially saying that it's not a real thing that requires any consideration, because, as you characterise it, it's merely something which valuers who want to get to a particular number can pray in aid and apply, rather than it being a genuine consideration which should be taken into account by valuers; correct?*

[361] Professor Yilmaz's First Report §501
[362] {Day17/76:16} – {Day17/77:13}

> *A.* ***No, it's a genuine consideration. You just have to do it seriously and genuinely, as opposed to one number fits all. I want to understand what's the source of that discount. Is it market inefficiency? Is it weakness in corporate governance? Is it something else? So I just want to understand that.***
>
> *And sometimes there are things that in fact, calling it a discount is abuse the word of "discount". I use it because people use it. Like, is tax, is it a discount? No, it's just that governments have jurisdiction. They put taxes and people have to pay for it. If that's the cause of the difference, I use the word "discount". But in reality, it's just taxes. People just forget about thinking about taxes. It's as simple as that. I just decompose it into other components, that's all.'(emphasis added)*

1089. The Court accepts his view that the application of such a discount to be justifiable must have an identifiable basis and be supported in an evidenced way for each component part of the business that is being considered.

Windfalls

1090. The Company argued that since the Dissenters took advantage of the observed HoldCo discount and had the benefit of it when they bought into Sina in the first place, whenever such acquisition occurred, they would now get a windfall if it was not applied.

1091. However, it may equally be said against the Company that when Mr Chao and the Buyer Group acquired the Company, they bought it in whole (*en bloc*) and all of its value. If the shares were under-priced by virtue of the HoldCo effect Mr Jaishankar suggests, that enabled them to take Sina private at a huge discount.

1092. The Court does not find that looking at the alleged 'windfalls' assists it.

Valuation input

1093. The Court accepts the proposition put forward by Professor Yilmaz that the size of the HoldCo discount is neither a primitive nor a fundamental input into the Company's valuation.

1094. It also accepts the Dissenters' case that, as far as economic or financial theory is concerned, Mr Jaishankar gave no justification for a Holdco discount.

1095. Professor Yilmaz's evidence which was not seriously challenged shows that the existence of such a discount has been barely discussed in the relevant literature and remains empirically unproven.[363]

Market inefficiency

1096. Moreover, the Court accepts that Professor Yilmaz's view is supported by the fact that the observed discrepancy between fundamental value and market capitalisation is potentially due to multiple factors, which include inefficiency of the market price[364] which can exist for a long period of time.

1097. Mr Jaishankar's reasons why the market may have priced Sina's shares as it did over time does not support his approach to the determination of the fair value for those shares. His assumption that the market for Sina's shares was efficient, that there was no MNPI, and that the share price was unaffected by Covid, have all been rejected by the Court.

1098. Professor Yilmaz accepts that the observed discrepancy may in theory be explained by the impact of constraints or restrictions like a lack of marketability or taxes or poor corporate governance.

1099. However, no such specific analysis has been applied to the 42.5% HoldCo discount Mr Jaishankar says should be applied across the board to all of Sina's assets and investments.

Mispricing

1100. The Court has concluded that to assume that a HoldCo discount should be applied as Mr Jaishankar suggests, also does not take into account the risk of mispricing. The Court was taken to some academic commentary in this area which it has reviewed to assist it in coming to this conclusion.[365]

[363] {Day17/183:8} – {Day17/184:21}
[364] {Day17/77:25} - {Day17/78:7}
[365]Cornell & Liu; Mitchell, Pulvino and Stafford, Lamont and Thaler

1101. The Court accepts that mispricing could arise because there is no identifiable reason based in economic forces to justify such a discount, and the market for Sina's shares has not been shown by the Company to be efficient.

The law of one price

1102. Professor Yilmaz opined that the limited academic literature in this area discusses the concept of a HoldCo discount as a violation of "*the law of one price"* so that price, in an efficient market with no other frictions, is expected to adjust back to equilibrium and is not permanent.

1103. In his view the underlying causes of the mispricing may not have been understood or eliminated which gave an opportunity for arbitrage.

1104. Professor Yilmaz explained the relevance of the law of one price and how mispricing occurs:[366]

> *"Q. But you're not analysing the holdco discount in relation to SINA in the context of or by application of the one price rule, are you?*
>
> *A. No, I was trying to explain these papers. The concept that I'm using implies that. If both companies -- if there are no other frictions, okay -- which is not true in this case, there are a bunch of other frictions. If there were no other frictions in this case, and we checked the efficiency, okay, which means that both of these stocks aggregated all the information correctly, and let's assume there is no MNPI, so public information is all the information there is to it, and if both stocks are efficient, then we would have the establishment of the one price rule, meaning that there would be no arbitrage opportunity. So in that sense, they are related*
> …
>
> *A. If -- if these companies are not correctly aggregating information, and if there are no other frictions that cause the discount, that inefficiency will lead into deviations from the one price rule. That's how they are related. Nothing more, nothing less."*

1105. The Court accepts his evidence as a possible explanation for the observed deviation, at least in part.

[366] {Day17/100:10} – {Day17/101:11}

Controlling shareholder

1106. Professor Yilmaz (although it was not part of his evidence on market efficiency) also seemed to be saying that a controlling shareholder (in the sense of voting power) who reduced the possibility of a takeover or proxy contest with super voting shares, might have given the market the impression that value was being extracted without transparency (by opportunistically buying the company at a discount), which could distort the trading price of a stock, whether or not this was in fact the case.

1107. Professor Yilmaz said:[367]

> *"The bigger source of valuation differences comes from the fact that the controlling shareholder extracts value by destroying value for the firm and the remaining shareholders. For example -- or some of it might be the perception of it; it doesn't need to be that they're going to do it.* ***If the market participants think that there is a possibility of diversion of value, opportunistically buying the firm at a discount, then the shares will be trading at a discount…"*** *(emphasis added)*

1108. This is supported to an extent by economic principles in various academic articles which Mr Jaishankar generally accepted.[368]

1109. It seems to the Court that in terms of market efficiency this would more likely be the case where there was a majority shareholder holding the majority of the actual shares, not 'super voting rights' or a majority of voting rights, because holding a large block of ordinary shares would affect liquidity.

1110. However, the Court has been persuaded that a shareholder who held super voting rights might have had some effect on valuation differences.

1111. If such considerations depressed the market for Sina's shares it seems to the Court, having accepted the Dissenters' case, that it would not be easy to reverse the forces which have had that effect, or to quantify the impact.

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[367] {Day14/41:9}
[368] Gompers, Ishii and Metrick (2010),Masulis ,Wang and Xie,(2009),La Porta et al (2002),Guhan Subramanian (2005);{Day11/135:1} – {Day11/135:4} ; {Day11/140:1} – {Day11/140:2}

1112. The Court was referred by the Dissenters to recent Delaware jurisprudence to which the Court has also had regard.[369]

1113. In *HBK* when considering the weight to be placed on market price in the context of a management buyout, Chancellor McCormick said at p.65:

> *"…the presence of a controlling stockholder provides reason to be skeptical of arguments touting market efficiency. Delaware case law has held that the presence of a controller is relevant to the efficiency analysis.*
>
> *[1] One group of commentators has explained the several ways in which a controlled company's stock market cannot price in all sources of going concern value. As they reason, the "market for corporate control is . . . absent [from controlled companies] because the controller can veto any transaction that it disfavors." So, the usual pressure that the market for control exerts on management is absent.*
>
> *[2] Also, market participants "value the firm based on the plans of the controller[,]" so the price will fall where the market believes that "the controller will under-manage the firm or divert resources to its own use in a way that evades judicial oversight[.]"*
>
> *[3] A controlling stockholder's presence can thus send signals to the markets to discount certain aspects of the company's business from the trading price.*
>
> *[4] Moreover, disregarding the controlling stockholder from an efficiency analysis would "engender uniquely detrimental incentives." If an opportunistic or malfeasant controller announces a bad squeeze-out*[370] *that markets predict will harm the minority stockholders (rightfully), traders will bid down the stock price."*

1114. The Court bears in mind that in this case Mr Chao was not a controlling shareholder in the sense of owning a controlling interest in the ordinary shares of Sina, but was certainly a controlling shareholder in terms of voting power which would have been well known to the market following the proxy fight in 2017.

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[369] *HBK v Pivotal* March 12 2024 (CA No 202-0165-KSJM)
[370] In Delaware a "squeeze out" refers to a "transaction in which a controlling shareholder buys out the minority shareholders in a publicly traded corporation, for cash, or the controller's stock".

1115. The Court was also referred to a recent Cayman case. In *iKang,*[371] the Dissenters argued that the Chairman's control, reinforced by a poison pill arrangement, rendered the market price unsafe. The Company's expert agreed that, as a result, it was not possible to be sure that the trading price was tracking intrinsic value at any given time. Segal J accepted that was the case at §406.[372]

Proper purpose

1116. The Court accepts the proposition that the existence of a controlling shareholder, in terms of voting power in this case, and how he might exercise that power, may have affected the market's approach to the share price. There was an immediate decline in the share price following the issue of the Preference Shares in 2017, which then recovered in 2018, but continued to decline thereafter.

1117. The Dissenters,[373] argued that the Preference Shares issued to Mr Chao could only be used for a proper corporate purpose so that any voting power attached to them had to be exercised pursuant to his fiduciary obligations. He was not entitled to derive any personal benefit in breach of those obligations.

1118. That in the Court's view is obviously correct.

1119. They further argued that Mr Jaishankar's explanation for a HoldCo discount was based on the false premise that Mr Chao had a 'free hand to use the votes as he pleased.' This they said created a false price effect in the market which did not reflect the true position.

1120. They argued that misinformed views on corporate governance are not an appropriate basis for a discount in a fair value appraisal.

1121. That is also correct in the Court's view.

1122. However, there is no reason to conclude the market was so misinformed.

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[371] *In the matter of iKang Healthcare Group, inc* FSD 32 of 2019 (NSJ) 21 June 2023 at § 397

[372] Segal J also held that the controlling interest had a "substantial chilling and complicating effect" on rival offers ,(see§§470-471) ,so that in addition the merger price was not set by an arm's length buyer in a competitive bidding process.

[373] Mainly the CO Dissenters

1123. The Court is not persuaded that the market thought that Mr Chao was 'free to do what he pleased' with the super voting powers conferred and could effect a merger which suited only his own interests.

1124. The Court accepts that the majority control of the Company, in the sense of voting power, was clearly not given to Mr Chao for his 'personal economic benefit', for a nominal sum. There is no good reason to conclude the market would have regarded it in that way either.

1125. In the Court's view, a reasonably well-informed market participant would have been aware that the reason given by the Company for the issuance of the Preference Shares at the time was to prevent further proxy fights.

1126. However, there is no basis on which to conclude they would have understood that the use of those voting powers was restricted only to that immediate purpose and could not be used in the context of a later merger transaction to take the Company private.

1127. They would also know that the Directors' (including Mr Chao's) fiduciary obligations were to make decisions which were at all times in the best interests of the Company as a whole.

1128. Attached to the voting power under the Preference Shares in the context of the merger transaction was a fiduciary duty to exercise it for a proper purpose and for the benefit of the Company and its shareholders as a whole, in the same way as any power exercisable by the Company directly would be subject to the same duty.

1129. The Court is not persuaded that Mr Chao in his capacity as director and chairman of the board of the Company, exercised his super voting powers in breach of duty, 'for his own ends' over and above the interests of the Company in effecting the merger.

Reverse engineering

1130. Professor Yilmaz also expressed the view that a HoldCo discount is used by some analysts and brokers to justify various reductions of the fundamental values that they obtain, using multiples and DCF methodologies, in order to justify the price that they prefer.

1131. He is of the opinion that this is an exercise in "reverse engineering" whereby one finds the discount needed to go from fundamental value to a desired price.[374]

1132. Professor Yilmaz in his second report said:

> *"336. As stated in the Yilmaz Report, the size of this discount is not a fundamental input to a company's valuation but rather reflects an observed discrepancy between fundamental value and market price, potentially driven by multiple factors such as legitimate frictions (e.g., taxes or lack of marketability), poor corporate governance that penalizes investors due to detrimental actions by decision-makers (e.g., expropriation by a controlling shareholder), or inefficiencies in the stock price. Thus, using such a discount to value a company is effectively reverse-engineering, as it entails determining the discount required to align fundamental value with a desired price".*

1133. The Court accepts Professor Yilmaz's analysis.

1134. The Court also accepts, and Mr Jaishankar seemed to agree, that the purpose of such a discount could be to bring the valuation back to the market trading price.[375] That would not be legitimate in the context of arriving at a fair value determination.

Conclusion on HoldCo discount

1135. The Company invites the Court to apply a 42.5% discount to the *en bloc* value of Sina calculated by the SOTP approach to reflect the actual characteristics and attributes of the shares that the Dissenters held in Sina as at the Valuation Date.

1136. The Court is of the view that a HoldCo discount of the size and nature that the Company advances is not justified.

1137. It is not connected to the fair value of the Dissenters' shares by reference to particular characteristics of the Dissenters' shares.

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[374] §528 of Professor Yilmaz's First Report and §323 of Professor Yilmaz's Supplemental Report
[375] {Day7/47:20-48:22}

1138. The absence of any evidenced reason or explanation for the observed discount leads to the conclusion that no such discount should be applied.

Conglomerate discount

1139. The Court and Professor Yilmaz discussed that sometimes a discount is applied by the market because a company is a collection of different operating businesses and has ownership interests in other assets and businesses. This is sometimes referred to as a conglomerate discount.

1140. Professor Yilmaz thought that there was no real difference with a HoldCo discount, and the difference is merely one of nomenclature:[376]

> *"JUSTICE PARKER: I think it's difficult, for me, anyway, to really understand whether you start looking at discounts from the point of view of the headline naming of it, whether it's called "holdco", ... [or] a minority or a conglomerate. It doesn't really help in a sense. What you have to work out, I think, is what it's aiming to do and whether or not it's legitimate to apply a discount in the first place, rather than giving it a name. So my question as to what's the difference was really: does it matter what you call it?*
>
> *PROFESSOR YILMAZ: In some ways, it doesn't matter. I actually tried to decompose the economics. What's the source of the friction? What is it that we're trying to do?*

1141. Professor Yilmaz referred to academic literature[377] which shows that the concept of a conglomerate discount was not an accepted theory any longer.

1142. Mr Jaishankar accepted that Sina was not a typical conglomerate.[378]

1143. The Court accepts the position as summarised by Professor Yilmaz in re-examination:

> *"Even if this was a conglomerate, I would still say that there's no conglomerate discount, but this isn't a conglomerate".*[379]

[376] See the exchange between the Court and Professor Yilmaz at {Day17/71:10} – {Day17/73:23}
[377] Professor Yilmaz's First Report §511: Maksimovic and Phillips 2013
[378] {Day7/124:22} – {Day7/125:4}
[379] {Day18/234:11} – {Day18/235:4}.

1144. The Court accepts that characterisation. The Court accepts the Dissenters' case that a true conglomerate is likely to have friction in realising its sum of parts value (e.g., differential tax and currency).

Minority discount

1145. Mr Jaishankar is of the opinion that the application of a HoldCo discount subsumes the minority discount which would otherwise be applicable.

1146. Professor Yilmaz excludes any adjustments for minority discounts as in his view the concept of letting majority shareholders derive excess benefits from their voting power is counter to the concept of economic efficiency that should prevail in a well-functioning economy.

1147. He said if he were to apply a minority discount it would be minimal, in line with the evidence for common law countries which have legal systems which better protect property rights with less scope for expropriation.[380]

1148. Professor Yilmaz states that empirical evidence suggests that the minority discount typically does not exceed 2% in well-governed markets with strong legal protections for minority shareholders.[381]

1149. The Privy Council's decision in *Shanda Games*[382] said that a minority discount may be applied in appropriate cases:

> *"42. In the opinion of the Board, it is a general principle of share valuation that (unless there is some indication to the contrary) the Court should value the actual shareholding which the shareholder has to sell and not some hypothetical share. This is because in a merger, the offeror does not acquire control from any individual minority shareholder. Accordingly, in the absence of some indication to the contrary, or special circumstances, the minority shareholder's shares should be valued as a minority shareholding and not on a pro rata basis."*

[380] See §§513-518 of Professor Yilmaz's First Report
[381] See§§ 516-517 of Professor Yilmaz's First Report and §§331 and 332 of Professor Yilmaz's Supplemental Report
[382] *Shanda Games Ltd v Maso Capital Investments Ltd and Others* [2020] UKPC 2 §42

1150. However, the Board also stated that it depended on the circumstances as to whether such a discount was appropriate.

1151. Mr Jaishankar says if a HoldCo discount were not, as a matter of principle found to be applicable (as the Court has decided is the case), then a minority discount of around the same quantum (42.5%) would instead be appropriate to be applied.

1152. That seems to the Court to be quite a leap of logic.

1153. To justify this Mr Jaishankar referred to the 'myriad of factors' that comprise the analysis and quantum of the HoldCo discount and said they are the same or similar factors that would be relevant to the analysis and quantification of a minority discount.[383]

1154. He gave as an example where the controlling shareholder can make decisions on behalf of the company to divest existing investments and make new investments and therefore can control the timing and quantum of cash flows and distributions from the structure, whereas the minority shareholders have no such ability.[384] The Court notes the Dissenters' argument on this that the SOTP valuation of the Company is by reference to the investments it had at the Valuation Date, not by what investments it might have made after that date.

1155. Mr Jaishankar further said that in companies with dual class share structures, the non-super-voting shares are often traded at a discount for lack of control as demonstrated in the academic studies cited by Professor Yilmaz[385]. These studies show that the level of minority discount in common law countries is 2% or less.[386]

1156. It would in the Court's view be unprincipled and wrong to apply a minority discount of the order of magnitude suggested by Mr Jaishankar as an alternative to a HoldCo discount.

1157. Mr Jaishankar pointed out that in *Shanda Games* the experts agreed a 23% minority discount was to be applied. However, each s.238 case turns on its own specific facts. On the facts in this case the Court is of the view a discount of that magnitude is not justified.

[383] §§ 8.1-8.7 of his supplemental report
[384] {Day7/139:6} – {Day7/140:5}
[385] {Day11/133:11} – {Day11/134:6}, and {Day11/137:24} – {Day11/138:13}, and {D2/181}.
[386] Dyck and Zingales (2004); Nenova (2003).

1158. In the circumstances that prevail in this case, the Court is persuaded that the minority shareholders' property rights were insufficiently well protected due to their lack of effective control.

1159. The Court has concluded that the fair value of their shares should in this case be adjusted to reflect their true nature which should include a discount for lack of control and marketability.

1160. The fair and reasonable minority discount the Court will apply in this case is 2%.

Other discounts

1161. Professor Yilmaz accepts that discounts are appropriate to account for lack of marketability of some long-term investments (DLOMs), IPO under-pricing, and taxes. He assesses that combined those discounts reduced the value of the company by US$362 million and the value of the Dissenters' shares by 4.13% or $5.90 per share. The Court accepts that approach.

Conclusions

Market price and merger price

1162. The adjusted market trading price of Sina, whose market for shares has not been shown to be efficient as at the Valuation Date, is not a reliable indicator of the fair value of the Dissenters' shares.

1163. The merger price cannot be relied on either for assessing the fair value of the Dissenters' shares.

General approach

1164. An SOTP valuation is the best methodology to use in assessing fair value in this case.

1165. In assessing the elements of the SOTP valuation to find the fair value of the Dissenters' shares the Court bears in mind that the purpose of the exercise is to compensate the Dissenters in relation to the value of the shares they actually held. There is no premium to be applied for dissent.

1166. The Dissenters' status as arbitrage investors has no bearing on the Court's analysis. They are no less deserving of the Court's protection.

1167. In assessing the fair value determination, the Court has applied concepts of equitable treatment and fairness and has to an extent 'stood back' from the intricacies of the analyses by the experts and looked at the matters in dispute 'in the round'.

1168. The Court has attempted to ensure that the fair value outcome makes sense, having regard to the operative commercial and regulatory reality of the Company.

SOTP valuation

1169. As a consequence of the valuation approaches accepted by the Court in relation to an SOTP valuation, for the reasons given in this Judgment, the Court's views are as follows.

Sina's interest in Weibo

1170. The Court does not accept Professor Yilmaz's reliance on the market trading price as of the Valuation Date.

1171. It prefers Professor Yilmaz's walk forward analysis to Mr Jaishankar's.

1172. The Court accepts Mr Jaishankar's DCF calculations, except for an adjustment to the Country Risk Premium figure, where it accepts the figure suggested by Professor Yilmaz.

1173. It accepts Professor Yilmaz's evidence in relation to the actual performance of Weibo and the treatment of intercompany loans.

Sina Standalone

1174. The Court finds that the Company's Privatisation Projections are reliable and do not require any adjustments in the Court's estimation. It approves Mr Jaishankar's DCF calculations. It does not approve Professor Yilmaz's multiples approach.

Portal and Fintech

1175. The Court does not accept Professor Yilmaz's revenue multiples analysis**,** nor his DCF analysis as a cross-check.

1176. It accepts Mr Jaishankar's DCF calculations and his valuation.

Discounts

LTI's

1177. The Court accepts Professor Yilmaz's approach to discounts in relation to LTIs, including TuSimple.

TuSimple

1178. The Court accepts Professor Yilmaz's IPO scenario and a non-IPO scenario approach to the valuation of TuSimple.

1179. In a non-IPO scenario, it accepts the Series E financing approach.

1180. Having considered the relevant factual and expert evidence the Court settles on an 80:20 IPO/non-IPO probability weighting.

1181. It accepts Professor Yilmaz's adoption of a comparables/multiples analysis under an 80% IPO scenario. This should be discounted back to the Valuation Date, and it approves a 20% IPO discount, as well as a DLOM as suggested by Professor Yilmaz.

HoldCo discount

1182. The Court does not apply a HoldCo discount to the fair value determination of the Dissenters' shares.

Minority discount

1183. The Court accepts on the facts of this case that a minority discount should be included and applies an additional 2% discount.

Calculation

1184. The parties, with the assistance of the experts, are to provide the Court with a fair value calculation which reflects these findings, for its approval.

Interest

1185. The parties are to provide the Court with written submissions on interest if a figure cannot be agreed.

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THE HON. JUSTICE RAJ PARKER
JUDGE OF THE GRAND COURT